FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

22 February 2018

Submissions Report

Exemption to enable personalised digital advice

A summary of submissions on the second consultation on the exemption to enable personalised digital advice.

Individual submission papers are appended.

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Executive summary

We would like to thank all submitters for their feedback on our second consultation on the exemption to enable personalised digital advice. We received 30 written submissions from a wide range of stakeholders including financial advisers, product providers, dispute resolution schemes, industry bodies, and law firms. We acknowledge the points raised and the effort put into the submissions.

This document contains a summary of key themes raised in submissions and our response to these. Individual written submissions papers are appended. Two submitters requested their submissions remain confidential. These submissions have not been published. Others have sections redacted. We can withhold information in accordance with the Official Information Act 1982 and Privacy Act 1993.

Summary of submissions

Our second consultation sought feedback on the draft exemption notice, information sheet and application documents. The key themes raised in submissions and our response to these are summarised below.

Draft exemption notice

Theme	Our response
Timing of exemption revocation (clause 3)	
It was queried whether providers would be able to continue to use the exemption to offer personalised digital advice without a full licence when the new financial advice regime comes into effect.	Although the exemption will be granted for the standard period of five years – until 2023 – in practice it will be revoked sooner, when the Financial Advisers Act 2008 (FA Act) is repealed and the new financial advice regime comes into effect. This is currently expected to be in 2019. We have updated the information sheet to include an expanded section on the new financial advice regime.
Definition of 'digital advice facility' (clause 4)	
Many submitters provided feedback on the draft definition of 'digital advice facility'. Some submitters requested that a reference to 'personalised' be added into the definition to avoid any suggestion that providers need the exemption to offer class services. Some submitters were concerned that the draft wording contemplated complex digital advice offerings and would not cover simple or alternative technological methods. Some submitters were also concerned that the draft wording would prevent providers from using 'hybrid' models, which do have some involvement from humans in the advice process. For example, advice predominantly generated by a computer program, but with a degree of manual intervention in the process; or processes where human advisers assist clients to use the digital advice tool. A few submitters raised that the recipient of the advice will be directly involved in the advice process – for example, by providing the information used to generate the advice – and asked that this be clarified.	We have amended the definition to add a reference to 'personalised'. Our view is that the wording 'through a computer program using algorithms' is sufficiently broad to cover simple personalised digital tools, which may only require a simple computer algorithm, and 'full-scale' digital advice platforms, which may require sophisticated computer algorithms – including machine learning algorithms. It also covers different technological channels to deliver the digital advice – for example, website, mobile app, etc. If providers have any concerns that a digital tool they wish to develop may fall outside the scope of the current wording, we encourage them to get in touch with us early. The definition has been amended to clarify that this covers both fully automated tools and 'hybrid' models that have some involvement by humans in the advice process. However, where a human adviser gives their own financial advice – for example, to supplement advice provided through a digital advice facility – or presents advice generated by a digital tool as their own financial

	advice, he or she must comply with the relevant requirements of the FA Act and (if applicable) Code of Professional Conduct ('the Code') in doing so. Clause 5 of the exemption has been amended to clarify this.
Definition of 'senior manager' (clause 4)	
A few submitters were concerned that the definition of 'senior manager' could be interpreted to apply to more junior staff rather than focusing on the member(s) of the senior management team who have overall responsibility for the personalised services provided through the digital advice facility.	For the definition to apply, the person(s) must exercise 'significant influence' over the management or administration of the service provided through the digital advice facility. We would usually expect this definition to only apply to one or two members of a provider's senior management team with overall responsibility for the service, not to more junior managers and staff. It does not apply to senior managers of unrelated business areas.
Definition of 'specified product' (clause 4)	
Submitters requested that certain additional products be added to the list of 'specified products'. Some also requested that renewals and variations of the terms and conditions of any specified products be added, for consistency with the approach taken under the FA Act definitions of category 1 and 2 products. Some submitters queried why the insurance products category refers to the Financial Markets Conduct Act 2013 (FMC Act) definition rather than to the FA Act definition. It was noted that the definition would prevent pre-IPO advice being given on financial products and suggested we consider including this.	We have added the following products to the list of specified products: • Units in a cash or term PIE (portfolio investment entity) • Bank notice products • Term deposits issued by licensed non-bank deposit takers • Interests in quoted management investment products • Renewals and variations of the terms of conditions of specified products. We have amended the wording of the insurance products category to be consistent with the FA Act category 2 product definition 'contract of insurance (other than an investment-linked contract of insurance)'. This wording reflects our policy decision for the exemption to apply to personal and general insurance products. Investment-linked contracts of insurance are excluded. We have not included the ability to provide advice on individual pre-IPO products at this stage but we would be happy to consider this further. If providers wish to develop digitals tools that provide pre-IPO advice we encourage them to approach us to discuss this.
Interpretation clause (clause 4)	
Some submitters noted that there are terms used in the exemption that are not defined in the exemption but are defined in the FA Act. These submitters requested that	We have added a note to the information sheet to confirm that terms used but not defined in the exemption

we insert a clause that 'Any term or expression that is defined in the FA Act and used, but not defined, in this notice has the same meaning as in the FA Act'.	have the same meaning as in the FA Act. Legislative drafting practice is that an express interpretation clause is not included in exemption notices unless the exemption also relies on definitions in regulations. Section 34 of the Interpretation Act covers definitions in the FA Act.
Timing of notification requirement (clause 7)	
Submitters requested that we reconsider the five-day time period for notifying the FMA of a material change of circumstances (MCOC), for example, to be consistent with the MCOC notification requirement for market services licensees under section 412 of the FMC Act.	Clause 7(1) has been amended to replace the five-day time period with a requirement to notify us as soon as practicable after the provider forms the belief that a MCOC has, may have, or is likely to occur. This is consistent with the similar requirement for market services licensees under section 412 of the FMC Act.
Definition of MCOC (clause 7)	
A number of submitters provided feedback on the definition of MCOC in clause 7(3). Some submitters requested that a materiality threshold be built into clause 7(3)(a), so that the notification requirement would only apply to material adverse changes. Others raised queries regarding the scope of the notification obligation under clause 7(3)(b). Some submitters sought clarification on when the requirement to notify adverse findings would apply. A number of submitters thought the scope was too broad and would require notification of matters unrelated to the provider's fitness to provide a digital advice service. Some suggested that the requirement be aligned with the reporting condition for market services licensees in regulation 191(1)(b) of the FMC Regulations, which focuses on proceedings and actions related to breaches of financial markets legislation.	We have built a materiality threshold into clause 7(3)(a). This now applies to a change that materially and adversely affects the provider's ability to provide the financial adviser service through the digital advice facility in an effective manner. We consider this means minor business interruptions – for example, a temporary website outage – would not trigger the notification obligation. We have amended the wording of clause 7(3)(b) to align this with regulation 191(1)(b) of the FMC Regulations. Providers must also notify us of proceedings for conduct relating to dishonesty, fraud, or misleading or deceptive conduct, and of bankruptcy or insolvency proceedings.
Consequences of notifying and failing to notify (clause 7)	
Some submitters were concerned that failing to notify a MCOC under clause 7 means the exemption ceases to apply, and felt this was disproportionate. Some submitters suggested the exemption be amended so a breach does not cause the loss of the exemption but instead allows the FMA to take supervisory action. Others noted that providers who comply with the notification requirement can continue to rely on the exemption. There is no requirement for the provider to remedy the issue or power built into the exemption for	We have amended clause 7 so that the exemption ceases to apply during the period that the provider fails to send the report until the report is sent. During this period, the provider would not have the benefit of the exemption and would need to cease offering the digital advice service to avoid breaching the FA Act. If the provider continued to offer the service during this period, we would consider our response in accordance with our general enforcement policy. We have updated the information sheet to explain what

the FMA to take action in response to a notification – for example, suspending or preventing the provider from relying on the exemption.	steps we will take when a provider notifies us of a MCOC.
Disclosure (clause 8(1)(a) / Schedule 2)	
Some submitters requested additional clarification about how to interpret certain disclosure items and ensure compliance with the disclosure condition. Various technical changes to the drafting were also suggested. Schedule 2 includes disclosure items intended to reflect Code Standard 8. It was raised that Schedule 2 requires providers to describe any limitations on the scope of service, but not the implications that those limitations may have for the service to be provided – unlike Code Standard 8. Other providers queried whether the requirement to state that the service is not endorsed or approved by the FMA was appropriate.	Please see the 'Draft information sheet' section below in relation to providing additional guidance about the disclosure condition. Some changes suggested by submitters would make the requirements less consistent with those that apply to AFAs. We have not made those changes. We have amended paragraph (1)(a)(iv) of Schedule 2 to require disclosure of 'the limitations (if any) on the scope of the service provided, including a brief description of the implications (if any) that those limitations may have for the service provided' (new wording underlined.) This aligns the requirement more closely with Code Standard 8. We have removed the requirement for providers to make a positive statement that the service provided through the digital advice facility is not endorsed or approved by the FMA. We will engage with providers on an individual basis if we have concerns that statements on their websites/digital tools are misleading consumers about the nature of our role.
Complying with the Code Standards (clause 8(1)(b))	
Some submitters thought it was uncertain how the Code Standards would apply, and requested the exemption prescribe this or we provide further guidance. It was raised that the term "reasonable assurance" in clause 8(1)(b)(i) has a particular meaning in the context of financial reporting and auditing, which could mean providers interpret the condition to require them to obtain an independent third party confirmation that their procedures will be compliant. Some submitters raised queries regarding use of the term 'systematically' in clause 8(1)(b)(ii).	Please see the 'Draft information sheet' section below in relation to providing additional guidance about how the Code Standards apply. The term "reasonable assurance" is not being used as a 'term of art'. We confirm there is no policy intention that providers be required to obtain an independent third party check or confirmation to comply with the condition. We have amended the clause to remove the word 'systematically'.
Record-keeping (clause 8(1)(c))	
A number of submitters noted that the exemption does not specify the timeframe records must be kept for, and suggested seven years be imposed, to align with the requirements for AFAs under Code Standard 13. A number of submitters queried whether 'written	We have added a condition that the terms of service require providers to retain the records for seven years and make these available to clients on request. The requirement to retain written records can be complied with by keeping the records in digital

records' would include digital (electronic) records. Some submitters queried the scope of the wording, for example, asking for clarification on whether providers need to retain written records regarding the disclosure and complying with Code Standards conditions in clause 8(a) and (b).	(electronic) form, provided the information is readily accessible. This is covered by section 223 of the Contract and Commercial Law Act 2017. We have amended the wording of the record-keeping condition to align the scope more closely with the record-keeping requirement for AFAs in Code Standard 12. The amended wording states providers must retain written records about the personalised services provided to retail clients through the digital advice facility, including the items listed in clause 8(1)(c)(i) – (iii). Our expectation is that the records that are kept enable the provider, its quality assurance function and the FMA to fully understand the personalised service that has been provided to the client.
List of approved providers (Schedule 1)	
Some submitters raised concerns that the need to amend the exemption notice to add new providers to the list as applications are approved may cause unnecessary delays, and queried whether it would be more practical for the list to be maintained on the FMA website. Other submitters raised that the exemption applies to providers listed in Schedule 1 rather than to particular digital services offered by those providers. The submitters queried whether a provider needs to reapply if it makes changes to the digital advice service described in its original application.	A formal variation of the exemption notice is necessary for the proper exercise of our exemption powers. For each application, we need to be satisfied the statutory grounds for granting an exemption under the FA Act are met, taking into account the purposes of the FA Act. We will only approve a provider's application if we are satisfied this is the case. Once approved, the process to amend the exemption notice to add the name of the provider to Schedule 1 is straightforward and should not be time-consuming. It may take one to two weeks for the amendment notice to be prepared, signed and formally notified in the *Gazette*. Please see the 'Draft application documents' section below in relation to changes to the digital advice service.
Annual report requirement	
Some submitters suggested we add an annual report requirement.	We are not imposing an annual report requirement as a formal condition of the exemption notice. However, we may periodically request providers give us updated information about their digital advice service and their use of the exemption. We have included a note about this in the application guide.

Draft information sheet

Submissions	Our response
'What is a digital advice service' section	
Some submitters asked for clarity on the scope of a digital advice service – for example, whether the service ends when the digital advice tool generates advice based on information entered by the client, or whether it needs to result in the sale of a product.	The exemption focuses on – and the conditions relate to – the giving of personalised financial advice or personalised investment planning services. The advice does not need to result in the client investing in or purchasing a recommended product.
Disclosure section	
Some submitters requested further detail be provided about how to interpret and comply with the disclosure condition and disclosure items set out in Schedule 2 of the exemption. Some submitters asked for guidance about how to make disclosures in a digital context – for example, whether providing a link to disclosure information or sending the disclosures in an email would suffice.	The disclosure items are based on and aligned with existing requirements set out in the Code and the Financial Advisers (Disclosure) Regulations 2010, as well as the disclosure requirements included in the standard conditions for QFEs. Existing providers with AFA staff members should be familiar with these requirements. We provide guidance in the information sheet about how providers may wish to approach disclosure in a digital context, focusing on the nature and scope of the service (paragraph (1)(a) of Schedule 2). The remaining disclosure items do not raise specific considerations relating to the digital nature of the service so at this stage we do not think it is necessary to provide additional guidance on these. As discussed in the information sheet, the form or method of disclosure is not prescribed. Our intention is to promote flexibility and innovation in how providers approach disclosure. Consistent with this, we have sought to avoid being overly prescriptive about what methods would or would not comply with the disclosure obligations. This may vary depending on the particular medium that is used. We expect providers to have turned their minds to the way in which disclosures are made, so if asked they would be able to explain why this is appropriate. If providers have additional queries about how to make disclosures in a digital context, they can get in touch with us to discuss this. We may update the information sheet from time to time or add an FAQ to include answers to common queries.
Conduct section	
Some submitters requested further detail about our views on what modifications would apply to the Code	Our policy view is that digital advice providers should meet the same standards as AFAs. The fact that advice is

Standards.	delivered using a digital delivery channel rather than through human-to-human interaction should not in principle affect the standards that apply to that advice. We recognise that the methods a provider uses to comply with the Code Standards for advice it gives using a digital tool may sometimes be different to those used by an AFA. At this stage we have not added further guidance, as we wish to avoid being overly prescriptive in how providers comply with the Code Standards. This recognises that the exemption can cover a wide variety of digital services delivered through different mediums, and what is needed to comply with particular Code Standards may vary. We will give this further thought. In the interim we encourage providers to engage with us individually if they have queries about how to comply with particular Code Standards in a digital context. This will help us consider what additional public guidance may be appropriate.
Record-keeping section	
A number of submitters raised concerns about the 'KiwiSaver open access tool' case study in the information sheet and requested this be revised. Submitters noted that a service is 'personalised' under section 15 of the FA Act if it is provided to a named client or a client who is otherwise readily identifiable, and queried whether this applied to the scenario described in the case study. Submitters also thought it was unclear whether the tool described in the scenario provided personalised advice that takes into account a person's individual situation or goals, rather than class advice. Submitters wanted to avoid any suggestion that existing class-based digital tools were providing personalised advice for which providers would need the exemption. Submitters also wanted clarification that the record-keeping condition does not require providers to retain records relating to anonymous users of a digital advice service when no personal identifiable information is provided.	We have removed the case study for the time being but can revisit this if we receive queries which suggest a case study or studies may be useful. We confirm there is no policy intention for digital tools that provide class advice to fall within the scope of the exemption. Providers are already permitted to provide digital class advice services under the existing FA Act and a number of these class tools are currently available. We have not changed our views on what constitutes personalised and class advice as set out in our KiwiSaver advice guidance note. We also confirm that providers do not need to keep records of digital advice provided to anonymous users. This would not be a 'personalised service' so providers would not need the exemption – and would not need to comply with the exemption conditions – to provide this.
Other requirements section	
A couple of submitters suggested we clarify that providers will have obligations under other legislation.	We have amended the 'Other requirements' section of the information sheet to cover this. Providing detailed guidance on other legislative requirements falls outside the scope of the information sheet. We recommend providers seek legal advice if they are uncertain about the legal requirements that apply to

	their business.
Monitoring and enforcement	
A few submitters queried how we would supervise and monitor compliance with the exemption, and our approach in the event of a provider breaching the exemption terms and conditions.	We have updated the information sheet to include a section on monitoring and enforcement.

Draft application documents

Submissions	Our response
Group applications	
A number of submitters raised that the application form is structured for a single applicant. They queried how corporate groups under which more than one legal entity will provide digital advice should apply. Some submitters also requested clarity about how the application process is intended to apply to QFE groups – for example, how this sits alongside existing QFE obligations. Some submitters suggested QFEs should have a modified application process with reduced requirements, in view of the process they have already been through to obtain QFE status and ongoing requirements that apply to QFEs.	Personalised digital advice may only be provided by those legal entities that have been approved by us and added to Schedule 1 of the exemption notice. This means that in a group context all legal entities that will provide advice through the digital advice facility will need to apply. We have made changes to the application form and the guide to better accommodate group applications. A single application form can be used, but the responses given in the application form will need to explain how each group member that is applying will meet the minimum standards. In a group context this could be done through shared services arrangements rather than each group member having its own separate arrangements in place to meet the minimum standards. We have also made changes to the application form and guide to address QFE groups. The focus of the exemption application process is on assessing the capability and competency of an entity to give personalised services through a digital advice channel. We have not previously assessed this as part of the QFE application process so, like other applicants, QFE groups will need to demonstrate how they comply with the minimum standards. If they wish, QFE groups can supply an updated version of their QFE Adviser Business Statement with tracked changes to support their answers. If QFE groups have further questions about how to complete the application form or how the exemption sits alongside existing obligations, we encourage them to get in touch with us.

Whether questions cover minimum standards	
The application guide is structured so that applicants can read the minimum standards (A), the questions asked (B) and our comments on things to think about (C). Some submitters raised concerns about whether it is possible for an applicant to answer all of the questions (B) and address the things to think about (C), and still fail to evidence the minimum standards (A). These submitters thought it was important to ensure that the content of the minimum standards in A is incorporated into the questions in B and things to consider in C, so that the answers given should address the minimum standards in A.	Applicants are assessed against the minimum standards, so it is important that applicants ensure their responses evidence that these are satisfied. We have added a clarificatory note about this to the application guide. The questions in the application form refer to the minimum standards but applicants will need to refer to the application guide to see these set out in full.
Offering new digital tools and services	
Some submitters queried whether a provider needs to reapply if it makes changes to the personalised digital advice service described in its original application.	The application process focuses on the provider and its capability and competence to provide services through a digital advice channel. Consistent with our approach to current advisers, we do not assess or approve the digital advice products or tools themselves. This means that, once approved, providers do not need to reapply if they make changes to their personalised digital service, as long as it remains within the parameters of the exemption – for example, the eligible product list. For example, providers may add new features to the digital tool described in their original application, or introduce a new digital tool for a different eligible product type. We ask questions in the application form about the digital advice service to help us understand the proposed size and nature of the provider's business. This assists our supervision and monitoring activities. We may also periodically request that providers give us updated information about their digital advice service and their use of the exemption – including details of any new digital tools provided. There is a note about this in the application guide.
Relief from providing details of past proceedings	
Some submitters noted that FMC Act licensees and authorised bodies have already provided these details and thought it was unnecessary for these to be provided again.	We have updated the application form so that FMC Act licensees and authorised bodies are not required to provide these details.
Need for capability minimum standard	
Some submitters thought the capability standard repeated information required for the 'good character',	We agree that the minimum standards are closely interrelated. To the extent applicants feel they have

‘risk management’ and ‘IT systems’ minimum standards.	already provided the requested information in another section, they can cross-refer to an earlier response. There is no need to repeat information already provided.
Timing of engaging service providers	
Some submitters raised that outsourced providers or technical experts may not have been engaged at the time of making an application, and asked for clarity on whether a description of the service to be provided by the third party would be sufficient for the purpose of the application.	We will need to consider the position of each applicant on a case-by-case basis to see whether the information that can be provided is sufficient to demonstrate compliance with the minimum standards. We encourage applicants to individually engage with us to discuss any questions they have about this.
Time to process applications	
Some submitters asked for clarity on the timeframe for processing applications.	We have updated the application form to include an indicative timeframe – please see paragraph 29.
Minimum capital requirements	
Some submitters thought there should be minimum capital requirements and/or a requirement to hold appropriate insurance.	We have not imposed this because it is not a requirement for advisers under the current FA Act regime. This may be required as a licensing standard under the new financial advice regime.
Good character declarations – relief from having to make declarations	
Some submitters thought good character checks on directors and senior managers should not be required because this is not included in the current FA Act regime and is not a requirement for QFE applications. A number of submitters noted that FMC Act licensees are not required to submit good character declarations for their directors and senior managers. These submitters thought that similar relief should apply to licensed insurers, on the basis that the RBNZ conducts fit and proper checks as part of the insurance licensing process.	Good character checks are an important component of AFA authorisations under the current regime. In this context, where an entity – which could be a QFE – provides the advice rather than a natural person, it is appropriate to instead conduct these checks on its directors and senior managers. As part of our good character assessment, we may contact other agencies such as the RBNZ for information. Directors and senior managers who complete the declaration are expressly asked to consent to this. However, it is important that we reach our own view of good character rather than relying on another agency’s assessment under a different regime, which is based on different information and criteria. For this reason we have not included an exclusion for licensed insurers.

Good character declarations – application of Clean Slate Act	
Some submitters asked that we clarify the extent to which the Criminal Records (Clean Slate) Act applies to the good character declarations.	We have updated the declaration form to note that nothing in the form affects a person's rights under the Criminal Records (Clean Slate) Act.
Good character declarations – FMC Act licensees	
Some submitters raised that directors and senior managers of FMC Act licensees appointed after the licence is obtained do not complete declaration forms but are required to be notified to the FMA, and asked for clarification that no declarations need to be provided for these people.	We have updated the application form and guide to clarify that existing FMC Act licensees and authorised bodies do not need to provide good character declarations for their directors and senior managers. This includes those appointed since the licence was obtained. This is because good character matters are covered by licensee requirements under the FMC Act regime.
Good character declarations – new directors and senior managers	
Some submitters queried whether good character declarations need to be provided on an ongoing basis for any new director or senior manager appointed after a provider has been approved for the exemption.	Approved providers do not need to provide us with good character declarations for any new director or senior manager appointments made after the provider is approved. Under the exemption, a provider is required to notify us if any of its directors or senior managers are subject to certain proceedings – see clause 7 of the exemption. This will apply to all current directors and senior managers – including any directors and senior managers appointed since the date the provider was approved.

Other

Submitters raised a variety of other points. Some were minor technical points or queries. Others raised policy issues that fall outside the scope of this consultation. These include:

- Querying our policy approach of requiring providers to apply to us for the exemption, raising concerns that this was time-consuming and disproportionate.

  We decided on this approach following consideration of feedback received on our first consultation. More information is available in our first submissions report.

- Querying our policy decision that personalised digital advice services should be delivered in a manner that is consistent with AFA standards, regardless of the type of product advised on. These submitters thought this may deter providers from offering personalised digital advice on category 2 products (as defined by the FA Act).

  As discussed in our first consultation, we decided not to apply a tiered approach that draws a distinction between category 1 and category 2 products (as defined in the FA Act). The eligible product list for the exemption has been based on the nature of the product rather than the category 1 and 2 distinction used in the FA Act. Our policy view is that personalised digital advice should be delivered in a manner that is

consistent with AFA standards. This was a strong theme in the feedback we received on our first consultation. Further information about this is set out in our first consultation paper and submissions report.

We are happy to engage directly with individual submitters to discuss any questions about our approach that are not covered by this submissions report.

Appendices

- Alistair Bean & Assoc's Financial Services Limited
- ANZ Bank New Zealand Limited
- Banking Ombudsman Scheme
- Bell Gully
- Boutique Advisers Alliance
- Cigna Life Insurance New Zealand Limited
- Craigs Investment Partners
- Cygnus Law Ltd
- Fidelity Life
- Financial Services Complaints Ltd
- Financial Services Council
- Forsyth Barr
- Institute of Directors
- Institute of Financial Advisers
- Insurance Council of New Zealand
- Kensington Swan
- Kiwi Group Holdings Limited, including Kiwibank Limited, Kiwi Wealth Investments Limited Partnership and Kiwi Wealth Limited
- MAS
- Mercer (N.Z.) Limited
- Milford Asset Management Limited
- MinterEllisonRuddWatts
- New Zealand Bankers' Association
- Partners Life Limited
- Russell McVeagh
- Stewart Financial Group
- Strategic Wealth Management Auckland Limited
- Westpac New Zealand Limited
- Personal submission

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 18/11/2017 Number of pages: 2

Name of submitter:

Company or entity: Alistair Bean & Assoc's Financial Services Limited

Organisation type: Individual Personalised Financial Adviser Services

Contact name (if different):

Contact email and phone:

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Schedule 2 (1.) (a) (iii) & (iv)	*To comply with Code Standard one of placing the Clients interest first - The first comment in all brief descriptions should state "The Client is dealing with a Computer for Advice and not a Person (Human) for Advice"* *This way, all Clients Can State "I knew, and I chose to deal with a Computer and not a Person" or conversely can't state, "I didn't know I was dealing with a Computer and not a Person"*
Statement of Reasons, Final Paragraph Pg. 8	*This paragraph clearly puts the entities needs first and not the clients – Transparency needs to be fully addressed here. Yes, there is a cost to an entity to provide Personalised Advice…*
22. d. of the guide	*First time Human is clearly mentioned however the use of the words "may" and "if" are used as an optional choice for an Entity. Without any compulsion here, this is the final area where specific mention of Option to speak to a Human Adviser, allows for complete abdication throughout the entire Exemption to mention the full transparency that a Client is dealing with a Computer and not a Human (Person)*

Feedback summary – *if you wish to highlight anything in particular –*

In my Opinion, the Exemption to enable personalised digital advice does not make sufficient provision to clearly state to the lay person that they are dealing with a computer and not a human (person) without thought or question.

I do not have an objection to personalised digital advice, I just believe that it should be presented and fully disclosed in a way that a reasonable client would be materially influenced in deciding for choice of service opted for – digital or human and a statement to this effect should be the first, statement, by all those exempted.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

15 December 2017

Financial Markets Authority
1 Grey Street
Wellington 6012

By email: consultation@fma.govt.nz

To whom it may concern

ANZ submission on the consultation: Exemption to enable personalised digital advice

Thank you for the opportunity to respond to the Financial Markets Authority (**FMA**) on the FMA's consultation on an exemption to enable personalised digital advice (**Consultation**).

Key Messages

We welcome FMA's decision to grant an exemption to enable personalised digital advice In general, we consider that the proposed exemption conditions and requirements strike the right balance between widening access to advice and ensuring appropriate controls are in place to ensure that advice provided under the exemption is high quality.

However, we have 2 key concerns in respect of the proposed exemption and the other materials included in the Consultation:

- The definition of a "digital advice facility" which may be provided under the exemption may be too narrow, limiting the ability to provide an appropriate range of personalised financial advice services under the exemption; and

- The case-study included in the draft information sheet for the exemption should be revised to make it clear that class advice tools can continue to be provided without having to make use of the exemption.

We comment further on these points in the Appendix, which also includes our detailed responses to the questions asked in the Consultation.

About ANZ

ANZ Bank New Zealand Limited (**ANZ**) is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ New Zealand Investments, OnePath Life, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management products and services.

Publication of submission

ANZ requests that its response to question 6 is kept confidential by the FMA on the grounds of commercial sensitivity.

Contact for submission

Should you wish to discuss this submission further, we would be pleased to do so. Please contact [redacted] to arrange, or email [redacted]

Once again, we thank FMA for the opportunity to provide feedback on the Consultation.

ANZ Bank New Zealand Limited

ANZ Bank New Zealand Limited

Appendix

Q1. Do you have any comments on the draft exemption notice?

We have the following comments on the draft exemption notice:

Definition of "digital advice facility"

This definition may be overly restrictive and inhibit use of the exemption.

The requirements for advice to be provided by using an "automated algorithm" and without the direct involvement of an individual may prevent certain types of digital advice from being provided. This could include advice which is predominantly generated by a computer program, but where there remains a degree of manual intervention in the process, or advice which is not generated by an "automated algorithm" but by an alternative technological method.

In our view, to address this, the definition of digital advice facility should be amended so that it is as follows:

"Digital advice facility means a technology and/or digital facility that provides a personalised service to a client."

We submit that the conditions to the exemption would not require any amendment as a result of this change, as the provider would still need to have in place procedures that give reasonable assurance that the financial adviser service complies with the relevant code standards. As such, amending the definition of a "digital advice facility" should not lessen the protection afforded to potential customers by the exemption conditions.

Clause 7 – definition of material change of circumstances

We submit that the second element of the definition of "material change of circumstances" (as set out in clause 7(3)(b)) should be revised to be consistent with the general reporting conditions for market services licensees under the Financial Markets Conduct Act 2013 (**FMCA**), as specified in regulations 191(1)(a) and (b) of the Financial Markets Conduct Regulations 2014 (**FMC Regulations**).

We consider that the following factors support this submission:

- Consistency with the market services licensee reporting conditions will minimise the compliance burden for providers that hold a market services license and wish to use the exemption, as it will allow them to make use of their existing processes and procedures for managing reporting obligations under FMCA.

- The reporting conditions under regulation 191(1) and 2 are more closely focused on breaches of financial services legislation and other proceedings which could indicate issues in respect of ongoing fitness and propriety. We therefore consider they are appropriate in ensuring that FMA is made aware of any relevant issues which may affect the capacity of the provider to continue to provide the digital advice service in an effective and appropriate way.

  By contrast, we consider the current drafting in clause 7(3)(b) to be too wide. As a large financial institution, ANZ is likely at any time to be involved in a wide range of matters before the courts and / or dispute resolution schemes, many of which will not be relevant to ANZ's capacity to provide a digital advice service or fitness to do so. An "adverse finding" in these matters could encompass innocuous matters or matters that are irrelevant to the provision of the digital advice service (for example, that ANZ is not entitled to enforce a security interest due to a procedural defect in the process for taking security).

  Further, the concept of an "adverse finding" does not have a precise definition in New Zealand law, which is likely to give rise to difficulties in assessing whether a notifiable change of circumstances has occurred.

We also consider that the requirement to notify a material change of circumstances that has occurred within five days of the provider becoming aware of the change should be revised so as to be consistent with the notification requirement for market services licensees under s412 FMCA. Under s412 FMCA, a report must be made to FMA in respect of a material change of circumstance as soon as practicable after the licensee has formed the belief that a material change of circumstance has occurred. We submit that this requirement is more appropriate, as 5 working days may be too short to properly evaluate whether an issue constitutes a material change of circumstances.

<u>Clause 8(2) – application of code standards</u>

We submit that it would be preferable for the exemption to specify the applicable modifications to the relevant code standards. Simply providing that the code standards apply with "all necessary modifications" is likely to give rise to interpretative difficulties for providers seeking to rely on the exemption, and therefore to reduce use of the exemption.

As an alternative, the information sheet could expand on the respects in which the code standards do not apply or require modification. The draft information sheet includes some examples of when aspects of the code standards do not apply, but in our view it will increase certainty for providers, and therefore encourage use of the exemption, if the information sheet were to provide more detailed guidance on FMA's views as to the application of the relevant code standards.

<u>Minor or technical breaches of exemption conditions</u>

We submit that the exemption should provide that there will be no breach of the exemption in a case where a failure to meet a condition is minor or technical only. This will avoid potential criminal liability arising for a breach of the underlying provision in the Financial Advisers Act due to a minor or technical failing on the part of the digital advice provider. We submit that this is appropriate from a general policy perspective, as well as from the perspective of encouraging providers to use the exemption.

Q2. Do you have any comments on the draft information sheet?

<u>Application of code standards</u>

As noted in our response to Q1 above, we consider it would be useful if the information sheet could expand on the respects in which FMA considers that elements of the code standards do not apply or require modification.

<u>Case study: KiwiSaver open access tool</u>

We consider that the case study included in the information sheet should be revised. Many open access tools (including those which provide advice in respect of KiwiSaver fund choice) are currently provided on a class advice basis. As currently worded, we think that the case study could be read as implying that a tool of this sort necessarily involves providing personalised advice, and therefore that providers must rely on the exemption to continue offering these tools.

For a service to be personalised it needs to "be given to, or in respect of, a named client or a client that is otherwise readily identifiable by the financial adviser" (s15(1)(a) of the Financial Advisers Act). Further, under s15(2) of the Financial Advisers Act, a service is not personalised "merely because the client comes within a class of persons having predefined characteristics and the financial adviser takes the fact that the client comes within that class into account."

The case study does not require a client to provide their name and it does not appear that the client is readily identifiable. It is also not clear that the advice provided in the case study takes into account the client's particular financial situation or goals or any 1 or more of them, or whether it only takes into account the characteristics of the class of persons which includes the client (the case study only states that the advice is provided based "on the details Aaron provides").

Accordingly, we submit that the case study should be amended to better reflect a personalised advice scenario.

Q3. Do you have any comments on the draft application form?

We have the following comments on the draft application form:

- The Good Character section of the draft application guide notes that, for existing FMCA licensees, it is not necessary to provide new declarations for directors and senior managers for whom a good character declaration has previously been provided. However, this is not clear on the face of the draft application form and we consider an amendment should be made to reflect the content of the application guide.

  It should also be clear in the draft application guide and application form that this applies in a case where a "Not 1.1 Form"[1] has been previously submitted to FMA in respect of a director or senior manager, but the director or senior manager has not completed a good character declaration (this will be the case where the director or senior manager was appointed after the relevant licence was granted). As the Not 1.1 Form requires confirmation that appropriate (and FMA specified) fit and proper checks have been conducted, we submit that the exemption from providing a good character declaration should also apply in this scenario. We also submit that consideration should be given to how assessments of character for the purpose of the exemption will be undertaken where there are changes of director or senior manager. Our view is that, for exempt providers which are also FMCA licensees, the Not 1.1 Form could be expanded to cover character assessments for the purpose of the exemption.

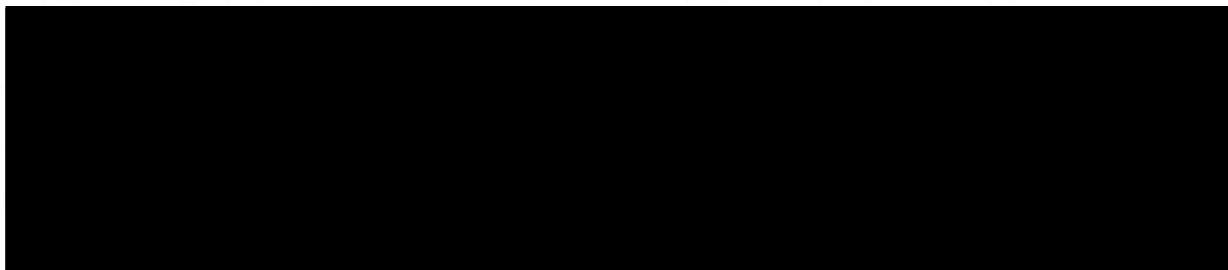
- The draft application form requires the entity to provide details of any past, current or pending criminal prosecutions, civil litigations or administrative actions involving it. Entities which are FMCA market services licensees will already have provided such information when applying for the relevant licence, and are subject to an ongoing reporting requirement to FMA under regulation 191 of the FMC Regulations, covering the commencement of any "relevant proceedings". Accordingly, we submit that it is unnecessary to require an applicant to provide these details again, and the application process could be streamlined by removing this.

Q4. Do you have any comments of the draft declaration form?

We have no comments on the draft declaration form.

Q5. Do you have any comments on the draft application guide?

We consider that the Good Character section of the draft application guide should note that a good character declaration is also not required in respect of a director or senior manager for whom the applicant has previously provided a Not 1.1 Form to FMA. See response to Q3.



1 Notification of change of director or senior manager by licensee and/or key personnel of authorised body (under Regulation 191 of the FMC Regulations 2014)

Q7. Do you have any other feedback or comments?

We have no other comments.

ANZ Bank New Zealand Limited

Banking Ombudsman Scheme
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Email help@bankomb.org.nz Website www.bankomb.org.nz
Facebook www.facebook.com/bankombnz

8 December 2017

Email: consultation@fma.govt.nz

Dear Sir/Madam

Submission on exemption to enable personalised digital advice

Thank you for the opportunity to provide feedback on the draft exemption notice and accompanying documents. The exemption has the potential to make personalised financial advice a more accessible and feasible option for many New Zealanders.

Our previous submission, dated 19 July 2017, was supportive of the proposed exemption, subject to a number of qualifications and conditions. We are pleased to see that these have been addressed and mostly incorporated into the draft exemption documents.

Our following comments are in response to the consultation paper and are based on two perspectives: ensuring the exemption provides adequate consumer protection, and technical issues that may arise from the way the exemption has been drafted. Although some of the points raised in our answers are cross-applicable to your questions, we have just included each substantive point once.

Question 1 – comments on the draft exemption notice

The current legislation requires that financial advice be given by a 'natural person'. Providing an exemption to this enables a more innovative approach, allowing providers and consumers time to adjust before the technology neutral law reform comes into effect. As currently drafted, the definition of "digital advice facility" states that there will be no direct involvement of any individual. Although this is true, we think it is important for customers to understand, and be reminded, that people will still be heavily involved throughout the process.

Consumer concerns may somewhat be alleviated by knowing the indirect way in which people will still be involved. For example, consumers are likely to be reassured by the fact that they will still be the ones inputting the data, overseeing the output and ultimately being accountable in the event of error. Further, consumers should be reminded that human help is available at any stage. If there is going to be some form of alert system in place (similar to 'Transaction Watch' for banks), consumers should be made aware of this.

Clause 8(a) and Schedule 2 describe the information that is to be disclosed to consumers. The information is to be given before or at the time advice is given, but we note that there does not seem to be a positive obligation on the provider to update the consumer of any changes to this information. If it is not intended there be a positive obligation, this should be made clear so as to manage consumer expectations and maintain consumer faith in the financial advice sector.

We noted that in Australia, consumers are advised to consider whether the digital advice provided will still be relevant following a change to personal circumstances. A statement

advising the consumer to renew their advice regularly will ensure there is some check in place for providing relevant and up-to-date advice.

We are supportive of the exemption excluding discretionary investment manager services. This is an area with more potential for disputes, as consumers may have issues relating to informed consent, acting outside client authority and a perceived failure to act in the consumer's best interests.

Drafting suggestions

- The definition of 'digital advice facility' could be clearer as to whether a 'computer program' includes output by way of a phone app or if it is restricted to advice being given only on a website.
- We question whether it would be advisable to prescribe a length of time that records must be retained for under clause 8(c), in order to assist with any disputes that may arise in the future.

Question 2 – comments on the draft information sheet

If there is a 'material change in circumstances' the onus is, understandably, on the provider to notify the FMA. But will the FMA monitor this? Our concern is that unless there is some kind of regular monitoring or audit process, the FMA will not necessarily be made aware that there has been a material change. A partial solution could be to require the declaration form to be renewed on at least an annual basis. Further, there is no indication of the FMA's intended process following notification that there has been a material change. The draft information sheet (under the subheading 'Notifying FMA of a material change of circumstances) could be expanded to clarify this.

Drafting suggestions

- It is unclear how long the application process is expected to take, even at a high level. Under the 'Application process' subheading, it might be useful to indicate how long the applicant can expect to wait before hearing back (even if it is not guaranteed to be a conclusive response).
- Under the 'Our comments' subheading, in the bullet point titled 'Explaining the scope of the advice being offered', the provider should be encouraged to state (at a high level) what financial services are not being offered as well as those that are.
- Under the 'Our comments' subheading, in the bullet point titled 'Clarifying the information used as the basis for the service' the limit of the scope of advice being given should be clearly set out. If the consumer provides information relating to their tax situation and debt obligations, should they expect to receive financial advice on this, or will it go beyond the scope of the advice being offered?

Question 7 – other feedback and comments

A large proportion of the disputes we see stem from miscommunication and a lack of financial literacy. It is for this reason that we believe that one of the biggest focus points for providers should be communication.

As raised in our earlier submission, we believe that the FMA should impose a condition requiring providers to actively confirm that consumers have read the disclosure statement and agree to

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Facebook www.facebook.com/bankombnz

receive the personalised advice digitally. Many complainants we deal with deny receiving disclosure information, so to include a mandatory condition for providers would eliminate the question of whether a consumer received the necessary information.

Conclusion

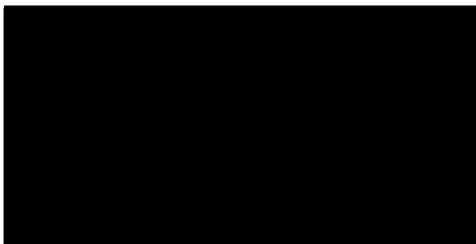
We support the proposed exemption to facilitate personalised digital advice as it has the potential to make quality financial advice more accessible at a lower cost.

About us

We are an approved dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Our participants are registered banks and their subsidiaries and related companies, and non-bank deposit takers that meet certain criteria. These criteria, regulated by the Reserve Bank, include the ability to demonstrate high-quality complaints-handling procedures.

Our aim is to improve the banking experience for customers and banks, as well to help resolve disputes between banks and their customers. We work with other agencies to increase customers' knowledge of how banking works and to empower bank customers to manage their banking affairs better.

Yours sincerely



Feedback form: Exemption to enable personalised digital advice

Date: 18 December 2017 Number of pages: 2

Name of submitter: [redacted]

Company or entity: Bell Gully

Organisation type: Law firm

Contact name (if different):

Contact email and phone:

Question or paragraph number	Response
Q1. Do you have any comments on the draft exemption notice?	*<u>Clause 4 (Interpretation)</u>* *We note that there are terms used in the Exemption Notice that are not defined in the Exemption Notice but are defined in the Financial Advisers Act 2008. Accordingly, we submit that the standard clause that "Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act" should be added to clause 4 (Interpretation) of the Exemption Notice.* *<u>Clause 7 (Provider must notify FMA of material change of circumstances)</u>* *We note that the language in the definition of "material change of circumstances" in clause 7 of the Exemption Notice is consistent with the language in section 410 of the Financial Markets Conduct Act 2013 which relates to markets services licences. However, our concern in this case is that, in the absence of a materiality component, any change that adversely affects a provider's ability to provide the financial adviser service through the digital advice facility in an effective manner is caught. For example, if the facility is unavailable for an hour due to a technical failure. Accordingly, we submit that a materiality component should be included in the definition of "material change of circumstances" in clause 7 of the Exemption Notice and the information sheet should give further guidance as to the circumstances in which the FMA expects notification to occur.* *We are aware that others are suggesting that the definition of "material change of circumstances" should also include changes in the type of financial adviser service provided through the digital advice facility. Whilst we agree that the FMA should be notified of a change in the type of financial adviser service provided through the digital advice facility, we do not think it makes sense that failure to notify the FMA of this within the requisite timeframe should result in automatic loss of the exemption.* *We note that no regulatory tool box has been built into the Exemption Notice to deal with circumstances where a notification of "material change of circumstances" is given.* *<u>Clause 8 (Conditions of exemptions)</u>* *We support the flexibility in the form and method of disclosure under clause 8(1)(a). This*

	could give rise to a number of different approaches by providers and accordingly we believe it would be beneficial to providers if the FMA provided guidance as to how it will assess compliance with the disclosure requirements. *The requirement under clause 8(1)(c) of the Exemption Notice to retain certain records does not stipulate a timeframe that such records must be kept for. We submit that there should be certainty as to the period for which the records must be kept and this should be built into the Exemption Notice.* *Schedule 1* *Finally, we note that it will be important to have the flexibility to add providers to the approved list in Schedule 1 over time as not all providers will necessarily be in a position to apply to be included in the approved list before the exemption is first issued.*
Q5. Do you have any comments on the draft application guide?	*We note that the guide provides (at page 33) that if a provider is an existing FMC Act licensee, and has previously provided the FMA with good character declarations for its directors and relevant senior manager(s), the provider does not need to provide new declarations. We submit that a similar waiver should apply to providers licensed under the Insurance (Prudential Supervision) Act 2010 and that this should be built into the application form.* *We understand from market participants that outsourced providers may not have been engaged at the time of making an application to rely on the Exemption Notice. Accordingly, it would be useful to have confirmation that the name of the outsourced provider is not critical to the application rather it will be sufficient to describe what will be outsourced and the selection process that will be undertaken to ensure an appropriate outsourced provider is engaged.* *We would support including in the minimum standards the requirement to have arrangements in place to ensure the provider can pay customer compensation, if awarded.* *We also note the following minor typographical errors in the guide:* • *Page 27 ,"Financial Adviser Act" should be "Financial Advisers Act"* • *Page 43, para 23(a), the single "n" in the following should be deleted "information n has been included"* • *Page 43, in the "Additional information" column of the payment details table under para 25(c) the "*" does not correspond to anything.*

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 11/12/2017 Number of pages: 1

Name of submitter:

Company or entity: Boutique Advisers Alliance

Organisation type: Back office support for financial advisers

Contact name (if different):

Contact email and phone:

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Schedule 2 Section 1. (c)	*This disclosure should be in the same format as for non robo advice to make for easy comparisons. Disclosure should also include turnover driven costs, brokerage on transactions and FOREX fees and margins.*
Schedule 2 Section 1. (d)	*Agreed*
Schedule 2 Section 1. (e)	*We believe the sentence (other than remuneration that a reasonable client would consider to be of such an insignificant nature….) should be removed.* *Robo advice is a business model based on scale, so what may be a small revenue item, once scaled becomes a key remuneration driver*
Schedule 2 Section 2.	*It is imperative that the remuneration disclosure regime is consistent across all advice forms, human and non-human. Failing to do this will see a repeat of the unfairness and ultimate failure of the advice regime created in 2008 by then then Minister Simon Power with the first iteration of the FAA.*

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: **15 December 2017** Number of pages: 2

Name of submitter: [redacted]

Company or entity: Cigna Life Insurance New Zealand Limited

Organisation type: QFE

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q1. Do you have any comments on the draft exemption notice?	7(3)(b)(iii) We request clarification on whether all adverse findings must be reported, or whether only material adverse findings must be reported. We also seek confirmation as to whether a complaint upheld by the Insurance and Financial Services Ombudsman (**IFSO**) would be a material change of circumstances. We submit that only material adverse findings (such as the ICNZ's 'significant breaches') should need to be reported. We also suggest that a complaint upheld by the IFSO that has nothing to do with digital advice should not be considered a material adverse finding. 8(1)(c)8 (c) We seek clarification as to whether digital logs would be considered 'written records' under this section. If not, we suggest that digital logs be specifically included as sufficient record keeping.
Q2. Do you have any comments on the draft information sheet?	*End of Service* We request clarification as to whether the digital advice service ends when (a) personal identifiable information is entered, (b) the tool returns advice based on information entered, or (c) advice returned results in a sale. *Application Process – Good Character References* Providers that are licensed under the FMCA do not need to submit good character declarations. We submit that insurers licensed under the Insurance (Prudential Supervision) Act 2010 (**IPSA**) should be afforded the same exemption. In order to obtain a license under IPSA an insurer must conduct fit and proper checks on directors and senior managers and submit them to the Reserve Bank of New Zealand. Accordingly, the FMA can have a high level of confidence that directors and senior managers of licensed insurers are of good character.

	Record Keeping Where the tool is used as a quote service, and no personal identifiable information is entered, the provider will be able to record the advice given, but it won't be able to record the identity of the user or any further action with regard to the use of the advice (for example, a subsequent sale). It is requested that the information sheet provides more detail about how a provider may comply with its obligations where no personal identifiable information is provided. We currently hold quotes for 14 days. We seek clarification on the length of time that a provider must keep records of advice given in the absence of personal identifiable information.
Q3. Do you have any comments on the draft application form?	We suggest, in light of our comments regarding IPSA licensees, that question 13 should have a sub-part which asks "are you an existing IPSA 2010 licensee?" for the purpose of identifying those who don't need to complete good character declarations.
Q4. Do you have any comments on the draft declaration form?	No, only the comments above regarding IPSA licensees.
Q5. Do you have any comments on the draft application guide?	It is possible that when a provider applies for this exemption, third party providers or technical experts required for operation of the service will not have been engaged, making it impossible to provide their details on the application. Where this is the case, we seek clarification on whether a description of the service to be provided by the third party will be sufficient for the purpose of the application.
Q6. (For providers) Do you intend to apply to us to be included in the list of providers able to rely on the exemption? If so, please provide an indication of when you expect to apply. Please also indicate how long you think it might take to prepare your application.	
Q7. Do you have any other feedback or comments?	In order to complete the application, providers will need to be quite well advanced in build and development. As any service release will be dependent on FMA approval, we seek clarification on the FMA's expected turnaround time when reviewing an application. Further, If an initial application is rejected, must the applicant start a new application from scratch (and pay the application fee again) or will it be allowed to amend any shortcomings in its first application and resubmit it? We also request clarification on how the FMA will determine which providers are small businesses and which are large businesses, for the purpose of this exemption.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

From:	
Sent:	Thursday, 14 December 2017 3:57 p.m.
To:	Consultation
Subject:	Feedback on the draft exemption notice and application documents – November 2017

Thank you for your consultation document on the exemption to enable personalised digital advice.

As our comments are brief, we have provided these in this email rather than complete the feedback form.

We commend the FMA both for their level of consultation on this issue and for deciding to provide an exemption to enable personalised digital advice. We believe it removes a significant barrier to improving the accessibility to advice in New Zealand.

We have reviewed the documents in the consultation document and believe they are well-designed, cover all the key areas and are workable.

15 December 2017

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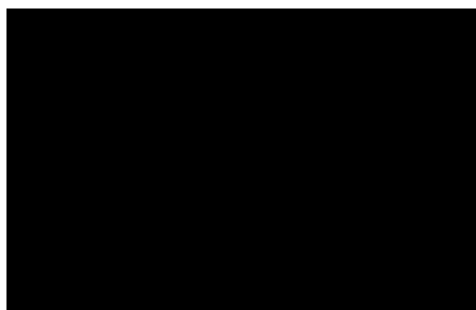
Financial Markets Authority
Level 2, 1 Grey Street
Wellington 6140

By email: consultation@fma.govt.nz

Cygnus Law's Submissions on Exemption to enable personalised digital advice

Thank you for the opportunity to provide feedback on the FMA's consultation on the exemption to enable personalised digital advice. Cygnus Law's submissions are set out in the Schedule.

Yours sincerely
Cygnus Law Ltd



Question	Response
Q1. Do you have any comments on the draft exemption notice?	• A “specified product” in clause 4 includes “a pure risk contract of insurance (within the meaning of section 9(3) of the Financial Markets Conduct Act 2013)”. I query why this definition is used when the Financial Advisers Act 2008 (**FA Act**) appears to provide an appropriate equivalent definition of “a contract of insurance (other than an investment-linked contract of insurance)”. Given the exemption is from the requirements of the FA Act I think it would be preferable to rely on the definitions in the FA Act unless there is a clear reason to use a different definition. • I suggest adding the follows words at the end of clause 5(2): “under the Financial Advisers Act”, to clarify that this is not a reference to a DIMS under the Financial Markets Conduct Act 2013. • With respect to the definition of “digital advice facility” in clause 4, the focus is on the “facility” as the conduit for “giving” or “providing” the relevant financial adviser service. This approach appears to treat the facility as the equivalent of a human adviser under the FA Act. The language used is based on that in section 961(6) of the Australian Corporations Act but I query whether that is appropriate given the different context of the FA Act and the function of the exemption. I suggest that the exemption focus on the role of the provider in giving/providing the financial adviser services, consistent with the licence-type approach taken under the exemption and the future licensing regime. On that approach facility is not the conduit for advice but rather a tool for preparing advice/financial planning services given/provided by the provider. I propose the following amendments to that definition of “digital advice facility”: “digital advice facility means a facility for ~~giving~~ preparing financial advice~~,~~ or ~~providing~~ an investment planning service,— (a) through a computer program using automated algorithms; and (b) without the direct involvement of any individual” This change recognises that, while advice may be prepared by a facility, services will likely use people, to a greater or lesser degree, to help to deliver the financial adviser service. For example a representative of the provider may collect information via forms and may convey information and advice to the client generated by the facility. Or the provider may have a helpline to assist clients. Those individuals would not be giving/providing the service where they do not themselves review or approve the advice. I query whether “through a computer program” adds anything. It is used once in NZ legislation, in an example in the Patents Act. I also note that ASIC’s *Regulatory Guide 255 Providing digital financial product advice to retail clients* (**ASIC Guide**) defines “digital advice” as “the provision of automated financial product advice using algorithms and technology and without the direct

Question	Response
	involvement of a human adviser". It doesn't refer to a computer. I also query whether the words "financial adviser" should be added after "individual", reflecting the ASIC definition. • To support the suggested changes to the "digital advice facility" definition above I propose replacing the word "through" in clause 6 of the notice with "using" or "through or using". If adopted the same change would be required at clause 8(1)(a). This approach is supported by the explanation given in the draft information sheet and the application guide (emphasis added)- "The exemption is for [providers] who want to offer personalised services to retail clients *using* a digital advice service." • The condition at clause 8(1)(b)(ii) requires the provider to have "methods for systematically identifying deficiencies in the effectiveness of those procedures and for promptly remedying any deficiencies discovered". While I support high standards, the requirement to "systematically" identify deficiencies implies a level of perfection that may not be achievable even with all reasonable efforts. There is very limited precedent for this requirement in law and it is not referred to in FMA's licensing materials. I query whether the word "systematically" could be deleted without changing the substance of the obligation while supporting the implementation of practical tools to achieve that standard. • The condition at clause 8(1)(b)(ii) requires the provider to "make those records available to the FMA as soon as practicable after the FMA makes any request.". In the absence of an obligation on the provider to ensure its contracts provide for the right to pass such material to FMA (which is required under some FMA's licences) I query whether this obligation should be made subject to complying with privacy obligations. • Paragraph 1(e) of Schedule 2 requires the provider to provide all details of remuneration provided. While there are strong arguments in favour of full fee disclosure, currently advisers are not required under the FA Act or regulations to disclose that specific information. I query whether that places the digital advice service at a disadvantage to traditional advisers. • Paragraph 1(e) of Schedule 2 requires the provider to state that "the service provided through the digital advice facility is not endorsed or approved by the Financial Markets Authority". However, it's clear that the service provider (and, in effect, the service itself) is approved by FMA in providing the exemption so I query whether that statement is appropriate. An alternative would be to place restrictions on positive statements the provider is allowed to make about its regulated status and on use of FMA logos, which is an approach used in other FMA regimes. • The term "robo-advice" is only used once in the draft licence materials, in the application guide. Given it is common shorthand for the type of service that will be permitted under exemption I suggest adding the following words to the end of the second sentence

Question	Response
	in the statement of reasons: "(also known as "robo-advice" or "automated advice")". This is the phrase used in the ASIC Guide for that purpose.
Do you have any comments on the draft information sheet?	I suggest that the "Other requirements" section also note the possibility that the provider will have obligations under the Consumer Guarantees Act and may, in some circumstances, have responsibilities under Part 3A of the FA Act (broker obligations), under the AML/CFT Act and other law. My concern is that some inexperienced applicants might view the matters referred to in the "Other requirements" section as being a comprehensive list of other obligations. The risk is that they then spend considerable time and effort designing a service without providing for other obligations that may be applicable. I note that existing licence guides refer to other law, including the AML/CFT Act.
Q3. Do you have any comments on the draft application form?	
Q4. Do you have any comments on the draft declaration form?	I suggest the following amendment: "I am a director of the Applicant~~'s business~~"
Q5. Do you have any comments on the draft application guide?	• I suggest amending the capability description as follows: Your organisation must have people with the right skills and experience to provide the personalised digital advice service effectively and in compliance with law and the exemption. • The capability section refers to "staff or contractors" in a number of places. Equivalent sections in FMA licence guides, on which this is based, refer to the "management team". I'm not sure that the status or particular titles of the people involved, whether (for example) staff, contractors, consultants, directors etc is particularly relevant and I query whether a term such as "personnel" would be more appropriate. This will assist with consistent use in the information section, which at times doesn't refer to any title or name, or otherwise to "people", "staff" only, or "*including* staff or contactors".

Question	Response
	• Comment 15 states that the person performing the quality assurance function would usually be an AFA. However, the service may be one that would otherwise be provided by an RFA. I suggest that this is recognised, perhaps with an additional requirement that an AFA or other appropriately qualified person be engaged with respect to compliance with Code requirements. • I suggest that the first sentence of comment 19 be amended to clarify what is meant- one option is to add the words “the service” (or some equivalent term) after “IT systems to deliver”.
Q7. Do you have any other feedback or comments?	

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 3

Name of submitter: Fidelity Life Assurance Company Limited

Company or entity: Fidelity Life Assurance Company Limited

Organisation type: Life Insurance

Contact name (if different): [redacted]

Contact email and phone: [redacted]

To: consultation@fma.govt.nz

Subject: Exemption to enable personalised digital advice

Company: Fidelity Life Assurance Company Limited (Fidelity Life)

Introduction

Fidelity Life is a specialist life insurer providing insurance for individuals, businesses and employers. Our purpose is to protect New Zealanders' way of life. The life insurance industry is facing consolidation, regulatory and technological change. We see these as opportunities and are investing in a strong digital backbone to support innovation, productivity and improved support for our customers, advisers and partners.

New Zealand has one of the lowest penetration rates of life insurance in the developed world and only a third of Kiwis have life insurance cover. Our challenge is how we reach more New Zealanders and encourage them to protect their way of life. We believe that advice matters and that independent financial advice enables people to make informed decisions to access suitable insurance protection. Alongside New Zealand's network of independent financial advisers, we are committed to reducing under-insurance while protecting our customers.

Fidelity Life supports the decision to grant an exemption to enable personalised digital advice services to be offered under the current financial advice regime. While we believe that personalised digital advice cannot deliver the same value as a long term relationship with a professional human financial adviser, it may allow those consumers who would otherwise remain under-insured to have easier access to financial advice and insurance protection. Helping more New Zealanders to protect their way of life is beneficial for the whole market.

We reiterate that regulation around the provision of financial advice should be customer-centric with appropriate entry requirements and ongoing obligations to minimise the risks of poor customer outcomes. We have reviewed the draft exemption and accompanying documents with this focus in mind.

Feedback

We provide feedback on questions 1,2,3 and 5 only.

Q1. Do you have any comments on the draft exemption notice? and Q.2 Do you have any comments on the draft information sheet?

'The Provider must disclose the information set out in Schedule 2… before or at the same time as the client receives any financial advice or IPS through the digital advice service.' We agree that disclosure needs to be flexible and understand that the form and method of disclosure has not been prescribed to ensure that the disclosure process is as consumer-focused and engaging as possible. However, we submit that additional guidance should be provided from the FMA on how it will evaluate compliance with the disclosure requirements.

We request further clarification on how compliance with the obligations will be managed and enforced. Further to the Quality Assurance Function minimum standard, we submit that it would be reasonable to include an annual report requirement in the exemption. This would add an extra layer

of assurance that a Provider is complying with their obligations and enable the FMA to collect data on consumer, customer, provider and product information trends.

Q3. Do you have any comments on the draft application form? and Q5. Do you have any comments on the draft application guide?

We fully support a detailed and robust application approach that ensures Providers meet certain standards to promote the sound and efficient delivery of financial advice and encouraging public confidence. In relation to the minimum standards, we note that there is flexibility in how minimum standards can be met depending on the size and nature of a business. We submit that the flexibility should only be applied where the risk of consumer harm supports flexibility.

We previously submitted that to ensure consumers can access redress if risks are realised, there should be minimum capital requirements and/or a requirement to hold appropriate insurance to cover the risks and we submit that this should be included in the minimum standards and/or the application form.

While the application guide identifies "ongoing obligations" as one of the three things to know before application, we submit further guidance on how a Provider can meet and maintain ongoing obligations should be provided. Further, the application should include a section on how a Provider will meet the ongoing obligations.

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13 December 2017

Financial Markets Authority
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Submissions on exemption to enable personalised digital advice

Our submission comes from a background of investigating complaints across a broad spectrum of financial products and services.

We formally investigated 24 complaints (out of a total 216 complaints investigated) about financial advisers in the year ended 30 June 2017. While complaint numbers are relatively small, the 24 complaints represented a 70% increase on complaints investigated about advisers in the previous twelve months.

1. Do you have any comments on the draft exemption notice?

Section 7(3)(b)(iii)

1.1. This section states that a financial adviser service (which we assume will be re-worded as a 'financial advice provider' once the new legislation is passed), will need to tell the FMA about an 'adverse finding' by a court or approved dispute resolution scheme. It is unclear what is meant by the term 'adverse finding', in so far as a dispute resolution scheme is concerned.

1.2. We seek clarification on the reporting requirements under the exemption notice and the Financial Services Legislation Amendment Bill (FSLAB), which interrelate. It is critical the FMA provides clarity on this, because our scheme participants will seek guidance from us on the issue.

FSCL's classification of complaint investigation outcomes

1.3. We may issue a formal Recommendation (the final step in our process) finding that both the financial service provider (FSP) and the complainant have contributed to the complainant's direct financial loss. These cases are categorised as being 'partially upheld'. In other complaints we may say the FSP has wholly caused the loss, and we categorise these complaints as 'upheld'.

1.4. We may find there has not been any direct financial loss but the FSP has caused the complainant inconvenience, perhaps because of a service issue, or because the FSP has contributed to the complainant losing an opportunity (non-financial loss). I can award compensation up to $2,000 for non-financial loss. These complaints are also categorised as 'partially upheld', or 'upheld' if the only issue or issues in the complaint were in relation to non-financial loss.

1.5. It should also be noted that we have a two-step decision process. Before we issue a formal Recommendation, we issue an initial view and, only if the complaint is still not able to be resolved after this, FSCL issues a formal Recommendation. In the year ended 30 June 2017 we issued 25 formal Recommendations upholding or partially upholding a complaint out of 216 cases in total (approximately 11.5%).

1.6. In an initial view we may find that a FSP has contributed to the complainant's direct financial loss and/or non-financial loss. In most cases, after an initial view is issued, a FSCL case manager is able to assist the parties to reach a negotiated agreement, with a settlement agreement being signed. This is often a confidential agreement and may contain a clause confirming the FSP is not admitting liability when entering the agreement. In these cases, we class the complaint as having been 'settled'.

What does the FMA expect FSPs to disclose?

1.7. We assume that only complaints that have been partly or fully upheld, at FSCL's formal Recommendation step, would need to be reported by the FSP to the FMA? Confirmation is required.

1.8. If the FMA's view is that FSPs only need to report where FSCL has issued a formal Recommendation where the complaint is 'upheld', this may have the desirable effect of FSPs being more inclined to settle complaints earlier in FSCL's investigation process. Conversely, if the FMA expects findings from initial views to be reported, this is very likely to have the undesirable effect of FSPs being reluctant to settle complaints. This would not be a positive outcome for consumers.

Section 87 (inserting section 67) of the FSLAB

1.9. The robo-advice exemption notice does not fit well with section 67 of the FSLAB. Subsections 67(d) and (e) of the FSLAB require me to advise the FMA of any 'material' contravention of specific legislation, and any 'material' complaint.

1.10. We have concerns about the current wording of s 67 of the FSLAB. Firstly, 'material' is not defined, and the assessment becomes more difficult because, in terms of a 'material contravention', I must report where there is **likely to have been**, or **may have been**, a material contravention of specific legislation. We also note this new

obligation will make it more difficult for FSCL to assist parties in settling complaints because the FSP will be mindful of the fact that FSCL may be required to report the details of the complaint to the FMA, in any event.

1.11. There is potential inconsistency as while a robo-FSP may not be obliged to report on a settled case to the FMA, FSCL may be reporting where there is 'likely to have been', or 'may have been' a material contravention of legislation, or reporting the complaint as a 'material complaint', even if FSCL has not made a formal Recommendation to that effect. FSCL may also need to report where there has not actually been a complaint investigation, but where FSCL has simply been put on notice of a particular behaviour or practice.

1.12. We consider it would be helpful to both FSPs and the dispute resolution schemes if the FMA provides guidance about the type of information it expects FSPs and the schemes to disclose, both under the robo-advice exemption, and section 67 of the FSLAB. We consider it would also be helpful to adopt uniform terminology across the notice and the Act, as opposed to having the four phrases: 'material change of circumstances', 'adverse finding', 'material contravention' and 'material complaint'.

Section 8(1)(a)

1.13. We note that disclosure information can be given at the same time as the client receives any financial advice. As advice being given in a robo-advice setting is more likely to be instantaneous than traditional natural person advice models, it is very important that clients' understanding of the disclosure information is tested.

1.14. We suggest that if disclosure is given at the same time as the client receives the robo-financial advice, there should be a series of confirmations the client has to provide to confirm they have read and understood the disclosure document.

Section 8(1)(c)

1.15. We welcome this section. The robo-adviser's ability to collect and retain the information described in the section is key because this type of information is often lacking in complaints FSCL investigates.

1.16. However, we suggest that section 8(1)(c)(iii) could be strengthened by making it absolutely clear that the phrase 'copies of all algorithms and software used by the provider' includes keeping digital copies of the questions the robo-adviser asks the client (to receive the information noted at 8(1)(c)(ii)).

1.17. In addition, it would be helpful for the words 'or their dispute resolution scheme' to be inserted after 'FMA' in section 8(d) (this occurs twice).

Schedule 2 (Information to be disclosed)

1.18. We suggest that 'website address' is included in the contact details to be provided for the provider's dispute resolution scheme, in (1)(g).

2. Do you have any comments on the draft information sheet?

2.1. Referring to the section 'Using open access tools' on page 5, we are concerned consumers may use such a tool to see how much they could 'save' on, say medical insurance, if they do not disclose certain pre-existing medical conditions. We consider open access tools could, in some circumstances, encourage poor disclosure.

2.2. We suggest that a robo-adviser should be able to identify where the client is simply comparing prices (say by comparing the level of cover they want to pay for), and where the behaviour appears to indicate the client may end up non-disclosing or mis-disclosing material information.

3. Do you have any comments about the draft application guide?

Section 2 (Minimum standards)

3.1. We note there is no definition of a small or large business. Does this relate to the number of staff, the number of robo-advisers, the number of customers receiving advice from a robo-adviser, or the size of the overall business (for instance the size of the loan book)? Further guidance may be required.

Section 22 (Client filtering)

3.2. We welcome the client filtering guidance. We consider the area of replacement personal insurance (for example, life, trauma, income protection, health) is a high risk area for robo-advice.

3.3. In our experience, consumers have real difficulty understanding the extent of their duty of disclosure. We would therefore welcome robo-advisers using robust methods and questions to ensure clients understand their disclosure duties, and appreciate the risk of changing insurers, particularly if they have any pre-existing medical conditions. Appropriate warnings about the consequences of non-disclosure, and that the client should not cancel existing insurance policies until they have had suitable replacement insurance offered on the same or better terms, also need to be provided.

4. General comments

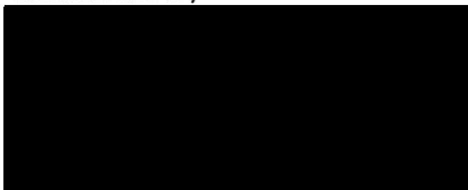
4.1. We support robo-advisers having to meet the same Code standards as an AFA. This will bring robo-advisers into line with the new FSLAB regime ahead of time, but ensures high standards are met by robo-advisers from the outset.

4.2. We note that in relation to mortgages and other consumer credit contracts, under the Credit Contracts and Consumer Finance Act 2003 and Responsible Lending Code, lenders are obliged to inquire into and assess the borrower's requirements and objectives.

4.3. We consider it will be more difficult for a robo-adviser to meet this responsible lending obligation than a natural person adviser. We urge the FMA to consider carefully whether robo-advice applicants, providing mortgage and consumer credit loans, have systems in place that can inquire well into the borrower's requirements and objectives. We assume that the FMA will consult with the Commerce Commission and the Ministry of Business Innovation and Employment on this particular issue.

We thank the FMA for the opportunity to present these submissions. Please contact me should you wish to discuss our submissions in any further detail.

Yours sincerely



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15 December 2017

Financial Markets Authority

By email: consultation@fma.govt.nz

Feedback: **Exemption to enable personalised digital advice**

The Financial Services Council of New Zealand Incorporated (**FSC**) thanks the Financial Markets Authority (**FMA**) for the opportunity to provide feedback on the draft exemption notice and accompanying documents.

The FSC represents New Zealand's financial services industry having 32 members at 15 December 2017. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers plus law firms, audit firms, and other providers to the financial services sector.

Our submission has been developed through consultation with our members, and represents the views of our members and our industry. There are a number of areas within the consultation documents where our members have requested clarification or further guidance. We have expanded on these areas in the 'Specific Responses' section. We acknowledge the time and input of all our members in contributing to this submission.

The FSC strongly supports initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

We continue to support the class exemption, recognising that it is a pragmatic solution to a consumer-need.

We are pleased to note that our earlier recommendations to include personal insurance and to remove value limits are reflected in the draft exemption. Generally, we believe the draft exemption notice (and supporting documents) achieve a good cost-benefit balance and will create a framework that encourages innovation while safeguarding the consumer.

However, we repeat our view from our submission of 19 July, that the exemption will only promote market integrity if the FMA has the capability to effectively regulate robo-advice providers who rely on the exemption. This may require additional resources who specialise in automated decision engines, and specialists in products such as fire and general insurance, life insurance and mortgages.

If you have any questions, please contact me on

Yours sincerely

Specific Responses

1. Do you have any comments on the draft exemption notice?

Disclosure
We support flexible disclosure – however our members request additional guidance from the FMA on how it will evaluate compliance with the disclosure requirements.

Ongoing obligations
It is not clear in the draft exemption notice or information sheet how compliance with the obligations will be enforced and managed. A potential option is to build in an extra layer of assurance through an annual report requirement, as this may enable the FMA to collect data on conduct, consumer, customer, provider and product information trends. This suggestion would need consideration of cost/benefit before progressing and is not supported by all FSC members.

Clause 7 (3) (b)

We submit that the requirements in clause 7 (3) (b) should be aligned where possible with similar requirements under the FMCA. This will ensure consistency and reduce duplication.

Clause 7 (3) (b) (iii)
Our members request clarification on clause 7 (3) (b) (iii), specifically whether all adverse findings are to be reported, or whether there will be a materiality threshold. For example, if a dispute resolution scheme upholds a complaint that has nothing to do with digital advice, does the provider need to report it? Clarity is also requested on whether the FMA should be notified if there is an adverse finding against a related party of the digital advice provider, for example a parent company.

One member tells us that an issue many applicants have had with existing licensing guides is that each section the applicant must evidence is divided into (a) minimum standards, (b) the questions they ask, and (c) what to think about. It is possible for an applicant to answer all of the questions, and still fail to evidence all of the minimum standards. The questions should be created so that likely answers together will address the minimum standards.

Clause 8
There are specific requirements in the exemption about record-keeping, applying code standards and disclosure. There are no minimum standards in the guide or application form that require applicants to evidence that they meet these requirements.

Clause 8 (c)
Our members request clarification about whether 'written records' include digital logs, as well as written communication.

2. Do you have any comments on the draft information sheet?
Our members have requested clarification on the scope of the 'digital advice service'. Specifically, does the service end when the tool/service has returned a result based on information entered? Or does the service include the recording of personal identifiable information or have to result in a sale of a product?

Application process – good character references
We note that licensing under the FMCA waives the requirements to submit documents on directors and senior management. We submit that licensing under the Insurance (Prudential Supervision) Act 2010 should provide the same exemption. IPSA requires providers to have conducted and submitted 'fit and proper' checks on directors and senior management to the Reserve Bank of New Zealand (**RBNZ**) already. Therefore, there should be no requirement to provide documents on directors and senior management for IPSA- licensed entities.

Record keeping
Our members highlight that, if the tool is used as a quote service where no identifiable information is entered up front, it will be possible to record the outcome but it will not be possible to identify the user or any further action with regard to the use of the 'advice'. We submit that the information sheet should expand on this scenario and clarify whether a provider is compliant if client information is not captured/held.

Further, the length of time that individual providers retain information on quotes varies, with one member advising that they retain quote information for 14 days. Our members request clarification on the required timeframe for keeping a record where there is no identifiable information related to the 'advice'.

3. Do you have any comments on the draft application form?
Good character
Per our response to Q2, we submit that Question 13 of the application form should ask 'Are you Licensed under IPSA by the RBNZ?'

4. Do you have any comments on the draft declaration form?
No

5. Do you have any comments on the draft application guide?
Financial standing
To ensure that consumers are able to obtain adequate redress if inappropriate advice is provided, we submit there should be a condition around appropriate financial resources or a requirement to hold appropriate insurance cover.

Ongoing obligations
While the application guide identifies 'ongoing obligations' as one of the three things to know before application, we request further guidance on how a provider can meet and maintain ongoing obligations. We also submit that the application should include a section on how a provider will meet the ongoing obligations.

Capability, risk management, auditing
A member has highlighted that at the time of application, third party providers or technical experts may not yet have been engaged, and therefore their details will not be available for the application. We request clarification of whether a description of the scope of service to be met by the third party will be sufficient for the purpose of the application.

7. Do you have any other feedback or comments?
Our members highlight that in order to complete the application, providers will need to be well advanced in build and development. As any software release will be dependent on FMA approval, our members ask for an estimate of the turnaround time for review of an application.

Further, if an initial application is rejected, our members ask whether an entirely new application is required (including a new fee) or whether there is a resubmission process.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 3

Name of submitter: [redacted]

Company or entity: Forsyth Barr Ltd

Organisation type: NZX Participant Firm

Contact name (if different):

Contact email and phone: [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number .	
Q1	*The definition of "digital advice facility" precludes the direct involvement of an individual in the facility.* *While we agree that an individual should not be involved in the formulation of the advice, we do not see any reason why an individual should not be involved in the advice process. Some elderly clients, for example, may be more comfortable if one of the provider's (non-AFA) staff sits with them in front of the computer, reads out the algorithm's questions and enters the client's responses. We do not see any reason why this should not occur, provided that the staff member is not providing financial advice themselves in the course of this process. Access to advice would be enhanced as a result.*
Q1	*Limb (a) of the definition of "material change in circumstances" does not contain a materiality threshold –it refers only to any adverse change. We do not think that there should be an obligation to notify the FMA of adverse changes that do not materially affect the provider's ability to provide the service.*
Q1	*The required disclosure set out in Schedule 2 falls short of the requirements of Code Standard 8 for a personalised service, which requires the AFA to ensure that the client is aware not only of the extent of any limitations in the scope of service, but also of the implications those limitations have for the service to be provided. Schedule 2 requires that the limitations of scope are described, but not that the implications of those limitations are brought home to the client. We believe there should be a requirement to describe those implications to the client in prominent terms.* *This will be particularly important where the service only recommends products of only a small number of providers, particularly given that robo-advice platforms are likely to be popular with vertically-integrated product providers. One of the failings of the current regime has been the non-level playing field afforded to QFEs; this non-level field should not be exacerbated by the roboadvice exemption.* *As the FMA will be aware, the Financial Services Legislation Bill takes an even stronger line in this regard and requires the provider to take reasonable steps to ensure that the client understands the scope of the service and any limitations (clause 431I). The FMA may wish to consider whether it is appropriate for the exemption to reflect this*

	approach, particularly given that many clients will have a tendency to "click and move on" when it comes to acknowledging disclosures. For example, in the application process providers could be asked what steps their algorithm takes to ensure that the client has actually understood the limitations of the scope of service (and the implications of those limitations). *As an adjunct to the above, we believe that clause 8(b) of the exemption should refer to Code Standard 8 as well as the other Code Standards currently referred to. For the reasons set out above, we disagree with the statement in the information sheet that Code Standard 8 is "reflected in the disclosure condition". Alternatively, clause 8(b) could reflect the wording of the Financial Services Legislation Bill and refer to the provider being satisfied on reasonable grounds that it has in place procedures that give reasonable assurance that clients will understand the scope of the service and any limitations.*
Feedback summary – *if you wish to highlight anything in particular*	*As noted above, the current regime favours vertically-integrated product providers with QFE status. It is important that this slant on the playing field is not exacerbated by the roboadvice exemption and that, where the product set associated with the service is limited, there is prominent disclosure of that fact and its implications for the client. While robo-advice platforms have the potential to improve access to advice, there is a risk that they become just another product-stuffing channel without any requirement to make sure the client understands that there could be other investments out in the marketplace that are more suitable for them.*
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

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telephone: 04 499 0076 email: mail@iod.org.nz iod.org.nz

11 December 2017

Financial Markets Authority
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Wellington 6140

Email: consultation@fma.govt.nz

Draft exemption to enable personalised digital advice

The Institute of Directors (IoD) appreciates the opportunity to comment on the draft exemption to enable personalised digital advice (the exemption).

Personalised digital advice (also known as robo-advice) is currently restricted in New Zealand under the Financial Advisors Act 2008 which requires personalised financial advice to be given by a *natural person*.

The proposed exemption is a temporary measure and will permit financial advisor entities to provide personalised digital services to retail clients. It is intended to improve consumer access to financial advice and promote innovation while providing consumer protection safeguards. When the new financial advice regime comes into effect (expected to be in 2019), the exemption will be revoked.

Financial advisor entities must apply to the FMA to be eligible for the exemption. As part of the application process, these entities will need to include good character declarations from their directors and senior managers. Our submission focuses on this aspect of the exemption process.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,500 members drawn from listed issuers, large private organisations, small and medium enterprises, public sector organisations, not-for-profits and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Chartered Members and Chartered Fellows of the IoD are required to confirm annually that they are of good character and are a fit and proper person. There is a list of criteria they need to consider in making this confirmation. Where a member is unable to agree/confirm any matters in the list, they must contact the IoD Registrar. This process has been in place since 2014.

Good character assessment

The exemption application guide states that the FMA's assessment of good character is important for preserving public confidence in the professionalism and integrity of financial advisor entities providing digital services. The assessment is based on (but not limited to):

- information in the directors and senior managers declarations
- feedback from third parties checks such as the Ministry of Justice
- conduct indicating past non-compliance
- convictions or involvement in dishonesty, deceit, theft or fraud
- failure to manage business or personal financial affairs
- dismissal from a position of trust
- adverse information from other government agencies and regulators.

We support the requirement for a good character assessment and recognise the importance of having directors and senior managers of good character responsible for entities that provide digital advice services.

We understand from the exemption application guide that directors and senior managers who have already provided good character declarations to the FMA for the purposes of the Financial Markets Conduct Act 2013 do not need to provide new declarations.

We make specific comments below on aspects of the good character declaration form (DA1.1 Declaration).

Good character declaration form

The declaration form must be completed by all directors and senior managers of the entity seeking to apply for the exemption. The draft exemption notice defines *senior manager* as "in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of the financial adviser service provided by A through the digital advice facility". *Director* is defined in the Companies Act 1993.

The declaration form has 11 questions and applicants must select yes or no for each question. If they answer yes to any question, they must provide full details in appendix 1 of the form.

Clean slate scheme
The form asks applicants to disclose certain convictions. We note that the Criminal Records (Clean Slate) Act 2004 allows people not to disclose some criminal convictions when certain requirements are met. The FMA may wish to consider alerting applicants on the declaration form of their rights under the Act.

Enforceable undertakings
Enforceable undertakings are an increasingly common tool used by regulators as an alternative to prosecution. The IoD's annual confirmation requires Chartered Members and Chartered Fellows to declare if they have "been party to or the subject of any enforceable undertaking or other arrangement with any regulatory body under which [they] may not be a director of any entity or concerned or take part in the management of any entity". Although question 5 may prompt applicants to disclosure that they are or have been subject to enforceable undertakings, the FMA may wish to have a separate question on this so it is more explicit.

Solvent v insolvent liquidations
We understand that question 6 is essentially about whether an applicant has been involved (at a governance or executive level) in a business that has failed. The question refers to, among other things, where an entity that has been placed into liquidation in the last 15 years. This could give rise to disclosures relating to businesses that have not failed. We note that it is common for companies to be put into liquidation when a business has been sold, ceased trading or reorganised for commercial purposes. We suggest the FMA consider distinguishing the type of liquidation, for example between solvent and insolvent liquidations.

Other behaviour not covered
The FMA may also wish to include a *catch all* question asking if there are any other matters it should be aware of in assessing an applicant's application.

Material change in circumstance

After an entity has been approved by the FMA to provide personalised digital services, they must notify the FMA of any *material change in circumstances* otherwise the exemption will cease to apply

(they have five working days to notify the FMA after becoming aware of the change). The meaning of the phrase includes where the entity or any of its directors or senior managers are subject to any of the following:

- a criminal conviction
- disciplinary proceedings under any enactment
- an adverse finding by a court or an approved dispute resolution scheme
- bankruptcy or any other insolvency proceedings.

Generally this appears to strike the right balance in protecting the public, while not unduly burdening the entity. However, the phrase "an adverse finding by a court…" is broad in scope and could be more pointed.

We appreciate the opportunity to comment on the exemption on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 12TH December 2017 Number of pages: 1

Name of submitter: [redacted]

Company or entity: Institute of Financial Advisers

Organisation type: Financial Advisers Association

Contact name (if different):

Contact email and phone: [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
	1. The exemption applies to a wide range of financial services/products as contemplated by the FSLAB – seems sensible *2. Section 2 provides for the application of most of the service-specific Code Standards that currently apply to AFA's – this also seems sensible and puts digital advice/sales on the same footing, with the same responsibilities to the client, as advice delivered by a real person adviser. We feel this is acceptable.* *3. Differing disclosure requirements to those of AFA's will apply in that primary and secondary disclosure documents will not be needed. Disclosure will apply at varying points of the advice/sales process. There will be requirements to disclose similar information as that required in current primary and secondary disclosures plus the sorts of information needing disclosure along the way, such as costs and conflicts of interest. We think these requirements look reasonable. We think most AFA's agree the current disclosure regime does not work well and needs to be overhauled. Perhaps the thinking displayed in this exemption shows an acknowledgement of this issue and provides some hope for what disclosure might look like under FSLAB. We think disclosure is a key issue for IFA in that the consumer needs to know who is providing the digital advice and what outcomes might arise from use of the digital system and whether the operator is independent or will only offer their own products. If the disclosure is operated as required we feel our concerns will be addressed.* *4. There is no specific mention of how breaches/misconduct will be addressed and who specifically would be liable. We note that the entity operating the system will need to be on the FSPR and be a disputes resolution scheme member. We would assume that the disciplinary and other avenues for legal redress currently available under FAA and via FMA will apply to the directors/and or managers operating the digital advice facility (as they currently apply to QFE owners/managers with respect to AFAs).*

Feedback summary – *if you wish to highlight anything in particular*	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 3

Name of submitter: ███

Company or entity: Insurance Council of New Zealand

Organisation type: General Insurance Industry Representative Organisation

Contact name (if different):

Contact email and phone: ███ ███

Question or paragraph number	**Response**
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q1	Section 4 of the draft exemption notice includes a definition of 'senior manager', but no where in any of the exemption documentation does it provide guidance on what action would need to be taken if the manager(s) were to change between the application for the exemption, and 2019 when it is likely to be repealed. We believe it would be helpful to clarify whether new manager(s) would be required to notify the FMA of the changes and to provide a new declaration. The record keeping requirements set out at section 8(c) seem particularly onerous. We require clarification around whether the written records can be kept in digital format, and how long the records would need to be retained for. We note that depending on the volume of material kept and the period it is required to be kept, for could lead to storage constraints for providers. Section 7(3)(b)(iii) requires providers to notify the FMA if the provider or any of its directors or senior managers are subject to <u>any</u> adverse findings by a court or an approved dispute resolution scheme. Our members would like clarification as to whether this means they need to notify each and every adverse finding, or whether there is some sort of threshold as to when findings need to be notified (for example, under the Fair Insurance Code "significant breaches" by members must be reported to ICNZ). We are pleased to see section 8(1)(b)(i) included in the exemption notice. We believe that Code Standard 2 – not doing anything to bring the financial advisory industry into disrepute is of particular importance in allowing the provision of robo-advice.
Q2	The same comments regarding record keeping, as set out at Q1 above, apply to the requirements set out at page 13 of the information sheet – what are the permissible forms of written record, and what the is the required time period for retaining records. The obligation to keep the same records for 'open access' digital advice, and to assign an anonymous user number as was suggested in the case study, for clients who get personalised advice without submitting personal details to the provider also seems onerous. We wonder if a lesser standard of record keeping could apply than where a client does provide personal details, given that the client has not provided the same

	level of information about themselves to receive the advice. For example, data could be stored as a digital record for 30 days, the current functionality for some of our members, and then discarded. Furthermore – what is the required timeframe for keeping a record where there is no identifiable information provided in relation to the advice. Again, we would propose a lesser timeframe than advice provided for identifiable clients, with one suggestion for this category of advice being to align with insurance quotes, which are held for 14 days. As a more general point, under the 'What is digital advice service', we believe that it would be helpful to clarify that the aim of providing digital advice service is to return a digitally-produced result based on the information entered by the client. It does not necessarily need to include personal identifiable information, nor to result in the sale of a financial product.
Q3	Along with Q13 of the application form, we submit that the 'Good Character' section of should also include whether an applicant is licensed under the Insurance (Prudential Supervision) Act 2010 (IPSA). If a provider is an existing FMC Act licensee, and they have previously provided the FMA with good character declarations for directors and relevant senior managers, they do not need to provide new declarations. We would like consideration given to extending this position to those providers licensed under the IPSA. The regulatory requirements under IPSA are such so that providers have to conduct and submit 'fit and proper' checks to the RBNZ. It is therefore submitted that if a provider holds a license under IPSA, they have already completed good character assurances to an equivalent level as that required by the FMA. While the draft application guide helpfully sets out that declarations are not needed for providers with an existing FMC Act license this is not set out in the application form. Instead, there is what we believe could be viewed as the ambiguous question set out at Q14 of the application form of 'How many directors and senior managers are you supplying details on behalf of…". It would be helpful to include this information in the application form as well, for the unwary. (If an extension to IPSA licensees were granted, then this should also be included in this section).
Q4	For those are required to provide declarations (i.e. not already licensed under the FMC Act, or as we propose, under IPSA) we believe it is onerous for each director and senior manager listed in the application to have to complete a declaration form – particularly as this exemption will likely only remain in force for a year. We would propose that director details be included in the application form, but only senior management who have direct oversight and responsibility for the digital advice be required to complete the good character declaration. We consider that it may be helpful to include a reminder in the declaration form about the definition of 'senior manager' so as to ensure the application is getting an appropriately senior level of sign off.
Q5	Overall, we find the application guide to be comprehensive and helpful.
Q6	N/A – the response to this question will depend on the particular insurance products provided by each of our members.
Q7	The definitions of general insurance are not consistent across all the draft documents. For example, page 10 of the information sheet lists 'eligible and personal insurance products', while page 17 of the application form states 'pure risk contract of insurance'. 'Pure risk contract of insurance' is also included in the definitions section of the exemption notice. So as to avoid confusion there needs to be consistency in the definitions used.

	Members would also like to know whether new entrants operating in the robo-advice insurance space will be required to demonstrate that they have the ability to meet the prudential requirements of the RBNZ, or to partner with a licensed insurer. Finally, it would be helpful if the FMA is able to provide an indication of how long they anticipate the review of an exemption application will take. Providers will need to be well advanced in the build and development of any digital advice services, and the release of those services will be dependent on approval.
Feedback summary – *if you wish to highlight anything in particular*	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

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15 December 2017

Financial Markets Authority
Level 2
1 Grey Street
Wellington 6012

By email: consultation@fma.govt.nz

Submission on Consultation Paper – Exemption to enable personalised digital advice

1 This is a submission by Kensington Swan on the Financial Markets Authority ('FMA') *Exemption to enable personalised digital advice consultation paper* dated November 2017 ('Consultation Paper').

About Kensington Swan

2 Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland.

3 We have extensive experience advising a range of organisations that provide financial adviser services, from major fund managers and insurers to brokers and sole adviser practices. We act for many advisers, QFEs, brokers, and other financial markets participants. We assist our clients with their regulatory compliance obligations and initiatives aimed at providing effective, relevant financial advice services to consumers, including through the application of technology to enhance their offerings.

4 We previously submitted on the *Proposed exemption to facilitate robo-advice consultation paper* dated June 2017 ('June Consultation'). In that submission we encouraged the FMA to release a draft exemption notice for consultation, along with the related application documentation. We are pleased to see this submission point addressed.

General comments

5 We support the actions and timing proposed by the Consultation Paper. We commend FMA's taking action now, particularly in light of the likely timing for the Financial Services Legislation Amendment Bill ('FSLAB') coming fully into force.

6 However, we believe that changes need to be made to the draft documents in order to make the proposed exemption workable in practice. At a high level, our key comments are as follows:

a Certain aspects of the draft exemption notice could usefully be clarified. In particular:

i the current 'digital advice facility' definition may be unnecessarily narrowly defined;

ii the current drafting of the clause 7 mechanism for reporting and enforcing material changes of circumstances results in a very blunt mechanism with no flexibility for FMA to take a proportionate enforcement approach; and

iii the process for adding providers to the exemption notice could be made more streamlined and therefore better able to respond to future developments.

b Certain statements in the draft information sheet can be interpreted as contradicting the position taken by FMA in its 7 November 2016 *KiwiSaver advice* guidance note ('KiwiSaver Guidance'), misstating the distinction between class and personalised advice. To provide certainty to the market, these statements should be revised. In addition, further guidance on FMA's expectations in relation to compliance in this context with the code standards set out in the Code of Professional Conduct for Authorised Financial Advisers ('Code Standards') would be helpful.

c We request that FMA provides further guidance in the application guide or the information sheet as to the level of detail FMA is seeking in response to each application question, and how the minimum standards will be applied to those providers wishing to offer very limited personalised digital advice.

7 Further detail is set out in our below responses to FMA's consultation questions.

Specific responses to Consultation Paper questions

Question 1: Comments on draft exemption notice

8 We have the following comments on the draft exemption notice:

The definition of 'digital advice facility'

9 We consider the definition of 'digital advice facility' to be unduly restrictive, as it excludes all advice provided with any direct involvement of an individual. We are aware of digital advice offerings that contemplate some degree of involvement from individuals (for example, by assisting clients to use the digital advice tool), and are concerned that such offerings would fall outside the scope of the exemption, resulting in a breach of the Financial Advisers Act 2008 ('FAA').

10 Similarly, the definition only appears to contemplate a 'full scale' personalised digital advice offering, and is not drafted to include more limited uses of technology. Overseas providers often take a 'hybrid' approach to the creation and delivery of advice.

11 We understand that the current definition has been largely taken from the Australian Securities & Investments Commission's August 2016 Regulatory Guide 255, *Providing digital financial product advice to retail clients* ('RG 255'). However, we believe that in modifying the definition in RG 255 to reflect the FAA regime and the use of a 'facility', key components of that definition have been lost.

12 We suggest modifying the definition to read as follows:

> **digital advice facility** means a facility through which a provider gives automated financial advice, or provides an automated investment planning service, using algorithms and technology, and with or without the direct involvement of an individual financial adviser

The definition of 'quoted'

13 The definition of 'quoted' currently refers to an equity security or debt security that 'is approved for trading' on either a licensed market or an overseas financial product market. For clarity, we suggest that this is amended to refer to being approved for trading on 'either **or both**', on the basis that many issuers are dual listed.

14 We also note that the current definition will prevent personalised digital advice being given on financial products at the pre-IPO stage. For flexibility, FMA may wish to consider including pre-IPO advice within the scope of the exemption (and, if it is to be included, similar drafting could be used to that in the definition of 'overseas listed products' in the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016).

The definition of 'provider'

15 In our view, the process for reliance on the exemption needs to be streamlined.

16 As currently drafted, the definition requires each provider to be named in Schedule 1 of the exemption notice in order to rely on the exemption. We consider this to be an unnecessarily cumbersome method of providing exemption relief, as it will require each provider to make an application to vary the exemption notice. Each new provider will then need to be added separately, or providers added in batches, by way of amendment to the exemption notice.

17 This process could significantly delay providers' ability to rely on the exemption as a result of the Gazette process required for exemptions. This runs directly counter to FMA's stated policy objective of facilitating and encouraging innovation, and risks creating a barrier to the provision of financial advice for no apparent consumer or regulatory benefits. Instead, we suggest FMA maintain a list of approved providers on the FMA website, with the exemption notice simply stating that a provider must be approved by FMA in order to rely on the exemption.

The definition of 'specified products'

18 We agree with the list of specified products and appreciate FMA's willingness to take on board feedback on the June Consultation by expanding the earlier proposed selection of products.

Clause 6 – Application of the exemption

19 As drafted, the exemption notice provides a blanket exemption for providers, rather than tying its scope to the products and services in relation to which each provider has applied. For example, it appears to treat a provider with a very simple personalised digital advice tool the same as a provider with a full service offering. As a result, there is no limit on the services that can be offered once a provider is named in the exemption notice, and no obligation to notify FMA of a change to the digital advice service unless it constitutes a 'material change of circumstances'.

20 We suggest there should be a clear link between the products and services for which an exemption is granted and those which are provided. This could be achieved through the exemption applying to a 'specified service', which is defined by reference to the service for which the provider has been approved to rely on the exemption.

21 This would enable FMA to apply the exemption and minimum standards proportionately to the particular provider and the services it provides, and to tailor the information it requires from each applicant. It is similar to FMA's power to limit the services able to be provided by a market services licensee under section 403(1) of the Financial Markets Conduct Act 2013 ('FMCA'). Doing so would be consistent with FMA's original stated intention to apply the conditions of the exemption proportionately to the size and scale of the service offered, as set out on page 12 of the June Consultation.

Clause 7 – Notification of material change of circumstances

22 The current drafting of clause 7 may have unintended consequences.

23 In particular:

a As drafted, a failure to notify a material change of circumstances within five working days of becoming aware of the change will set in motion a process under which the provider will automatically cease to be able to rely on the exemption. There is no flexibility for FMA to give relief to a provider or to suspend that process (for example, where the issue is being rectified to FMA's satisfaction). There is also no allowance given for delays caused by the need to seek legal advice to determine whether a particular change has triggered clause 7 (even if provision of the service is suspended during that time).

b Conversely, if a material change of circumstances occurred and was notified to FMA within the required timeframe, the exemption notice does not place any further obligations on the provider. As drafted, notification is all that is required – with no obligation to actually correct the issue that gave rise to the notification, or specific power under the exemption notice for FMA to determine to remove a provider other than by amendment of the exemption notice.

24 Accordingly, we consider that clause 7 needs to be amended to give flexibility and to address the above three issues.

25 We also suggest changing the current wording in sub-clause (3)(a) to refer to a change that has a '**material** adverse effect' on the provider's ability to provide the service, for consistency with existing FMCA standards (see, for example, sections 108, 112, 134, and 139, among others). This also aligns with the approach to financial advice reforms taken under the FSLAB.

26 In addition:

a The record-keeping condition in clause 8(1)(c) does not specify how long records must be kept or maintained for. We suggest an appropriate timeframe would be seven years, to align with current requirements for authorised financial advisers.

b The flexible approach used to express the disclosure requirements in Schedule 2 will allow providers to provide the required information in the most appropriate way for their specific tools. The consistency of the requirements, as drafted, with FMA's comments regarding disclosure in the June Consultation is also appreciated.

c The final sentence of clause 8(2) should read '…as if **the** service were given by an authorised financial adviser.'

Question 2: Comments on draft information sheet

27 We believe that the information sheet will be a useful resource for providers considering providing personalised digital advice. However, in our view it would be helpful for FMA to provide more detail as to what FMA expects to see providers doing to comply with clause 8(1)(b) of the exemption notice. Clause 8(1)(b) requires compliance with Code Standards 1 to 3, 5 to 7, and 9 to 11. Clause 8(2) simply states that those Code Standards apply 'with all necessary modifications as if [the] service were given by an authorised financial adviser'. However, the information sheet only provides further detail in relation to Code Standard 6.

28 In addition, the draft information sheet contains certain statements that suggest that FMA may have changed its view as to the division between class and personalised advice under the FAA. We believe this was inadvertent, but consider that it should be clarified.

29 For example, the case study on page 14 of the Consultation Paper refers to the client changing a response to indicate that the client is planning to use his KiwiSaver savings to buy his first home within the next three years. This implies that taking into account that particular factor would result in personalised advice being given – which contradicts the statements on page 9 of the KiwiSaver Guidance. We believe that this was not FMA's intention, given that the focus of the case study is on record keeping obligations, but suggest it is clarified.

30 More substantively, page 13 of the Consultation Paper refers to open access tools, which permit clients to obtain personalised advice without submitting 'personal details' to the provider. This description raises the following two issues:

   a It would be helpful to clarify that 'personal details' is a reference to identifying details, such as name, address, or employer (assuming this was FMA's intention).

   b Under section 15(1) of the FAA, in order for advice to be personalised it must be given to, or in respect of, a named client or a client that is otherwise readily identifiable by the financial adviser. Accordingly, if the information provided by a client through an open access tool does not result in the client being named, or is insufficient to make the client readily identifiable by the provider, then the resulting advice will not be personalised under the FAA. If FMA wishes to ensure that records are kept of advice given by tools that may be open access (for example, tools which make it optional for clients to provide identifying information), this will need to be specifically included as a condition of the exemption notice.

31 Any changes made to the terms of the exemption notice will also need to be consistently flowed through to the information sheet.

Question 3: Comments on draft application form

32 Please see our comments on the draft application guide below.

Question 4: Comments on draft declaration form

33 We do not have any comments on the draft declaration form.

Question 5: Comments on draft application guide

Implications of change in approach

34 The FMA's initial proposal was that a provider simply had to notify the FMA in advance that it intended to rely on the exemption, provide 'good character' information, and could then proceed once the FMA had confirmed in writing that it had no objections. The content of the draft application guide much more closely resembles the full licensing regime under the FMCA, and requires a significant amount of detailed information to be provided.

35 We are concerned that the requirement to go through what is, in substance, a licensing process may unnecessarily deter some providers from relying on the exemption. We question whether the level of detail required by the application guide is necessary, on the basis that:

a the level of detail currently required by the guide may result in information being provided that is not useful for FMA, and may delay the processing of an application, requiring additional, and potentially unnecessary, work to be undertaken by both FMA and providers; and

b the exemption will only be available until the FSLAB is fully in force and the guide makes it clear that being approved to rely on the exemption does not mean that the relevant provider will automatically be granted a licence under FSLAB.

36 Our clients have indicated to us that completing the application form, based on the draft documents, is going to add significantly to project timeframes for launching personalised digital advice services.

37 Accordingly, in our view the application guide should be amended to adjust and clarify the level of detail FMA is seeking in response to each application question, and how the minimum standards will be applied to those providers wishing to offer very limited personalised digital advice.

Client filtering

38 Page 41 of the draft application guide refers to providers having 'adequate and effective arrangements to filter out clients for whom the advice provided by the digital advice service is not appropriate, or who want advice that is outside the scope of the digital advice service'. However, the examples provided relate solely to the second part of the minimum standard (filtering out clients who want advice outside the scope of the provider's offering).

39 As a result, it is unclear what is required in order to filter out clients for whom the advice provided is 'not appropriate'. This is likely to be confusing for providers as 'appropriate' implies that providers need to make a subjective assessment of each client's capability. In effect, this could require providers to second-guess a client's own assessment of their capability, and may lead to a poor user experience, with the risk that poor user experiences will undermine engagement with digital advice tools. We suggest FMA elaborate on this aspect. Alternatively, FMA could delete the reference entirely, as the scope of advice to be provided will have a self-selecting effect – either clients will want the particular digital advice service described through the required disclosures or they will not.

Question 6: Indication of provider interest

40 This question is not applicable to us.

Question 7: Other feedback

41 In light of the number of issues to be clarified, as set out above, we believe it would be useful to release revised documents for further consultation, even if only on a targeted basis.

42 It is essential that the exemption provides, from inception, a clear and flexible basis for providers to offer digital advice facilities (however defined) to their clients.

Further information

43 We are happy to discuss any aspect of our feedback on the Consultation Paper.

44 Thank you for the opportunity to submit.

Yours faithfully
Kensington Swan

15 December 2017

For the attention of:

Financial Markets Authority
PO Box 1179
Wellington 6140

By email

Dear Sirs

Consultation submission:
Exemption to enable personalised digital advice

Please find attached a joint submission on behalf of Kiwi Wealth and Kiwibank on the consultation on the proposed exemption, dated 16 November 2017.

We welcome FMA's willingness to progress the proposed exemption to enable personalised digital advice, and strongly support the making of the exemption. In our view, the key areas for further development or clarification of the proposed exemption notice are:

- **A new licensing regime?** The exemption regime proposed is akin to a licensing regime. Whilst this may be intended to provide an easier transition when the Financial Services Legislation Amendment Bill 2017 (FSLAB) is implemented, this approach is likely to cause significant delays in realising the benefits of bringing forward the exemption - without providing any certainty of transition for participants which could not be provided by appropriate legislative transitional provisions. We would prefer a regime based on notification of use of the exemption, with FMA supervision against the conditions, as originally proposed.

- **Super-equivalent requirements** - The requirements in respect of tools for Category 2 products go beyond the current requirements for Registered Financial Advisers (RFAS) and QFE Advisers, without apparently being targeted to address risks related to the nature of the digital service. We are disappointed that the resulting Financial Advisers Act regime will not be technology neutral.

  We understand that the requirements may anticipate changes expected to the regime when the Financial Services Legislation Amendment Bill 2017 (FSLAB) comes into force, however, we do not believe that digital advice should be a testing ground for the FSLAB regime, or that imposing additional requirements on this channel encourages innovation and the sound and efficient delivery of financial advice. If additional requirements are retained, the FMA's rationale should be made clear.

- **Record keeping** – The proposed obligations could be costly and onerous, given that in many cases:
  - robo-advice tools will be relatively simple and retention of the tool will enable re-creation of the advice, if necessary.
  - the customer will not be identifiable from the information recorded.

  We suggest that the requirement should be revisited, to be more proportionate.

If you have any further questions regarding the above, please feel free to contact

Yours faithfully

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15/12/17 Number of pages: 7

Name of submitter: [redacted]

Company or entity: Kiwi Group Holdings Limited, including Kiwibank Limited, Kiwi Wealth Investments Limited Partnership and Kiwi Wealth Limited

Organisation type: Registered Bank and QFE and Derivatives Issuer, and Managed Investment Scheme licensee and Discretionary Investment Management Services Licensee

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Question 1	**Draft exemption notice**
Question 1 **- Revocation of exemption notice (clause 3)**	We note that the Statement of Reasons indicates that the Notice will be capable of existing until 2023 (although clause 3 is currently silent). We assume that the 2023 date is to allow the exemption to remain in place during the expected two-year transitional period for the reforms under the Financial Services Legislation Amendment Bill 2017 (**FSLAB**), in order for providers to continue to be able to offer personalised digital advice without a full licence. FMA has previously indicated that it is discussing transitional arrangements with MBIE to facilitate this. The 2023 date takes account of feedback from the industry that any uncertainty regarding the ability to transition to the new regime is likely to dissuade investment in robo-advice in the lead up to implementation of the reforms. In line with the above, the statement in the Information Sheet that "the exemption will be revoked when the new financial advice regime comes fully into effect" is confusing and should be amended to add "taking into account any relevant transitional provisions". In our view, if a provider is operating under the exemption notice when the new regime comes into effect they should be able to continue operating under it until they become fully licensed under the FSLAB. We appreciate that any decisions on the actual transitional provisions of the new regime will not be taken by the FMA, and that the FMA may wish to note this.
Question 1 **- Definition of 'digital advice facility' (clause 4)**	We recommend that the reference to "without the direct involvement of any individual" should be deleted as it has the potential to cause confusion given that there will always be some element of involvement by individuals with the service. We believe that the first limb appropriately captures what a digital advice facility would be. The reference may be intended to differentiate between digital advice facilities and digital tools which are used by advisers to facilitate their advice (eg where an adviser collects and inputs information to a digital tool, and uses the selection or information provided as a basis for their advice). If this is the case, we suggest that the reference to an individual is clarified, and the policy intent is clearly explained.
Question 1 **- Definition of 'senior manager'**	The nature of the senior manager intended to be caught should be clarified: • On one interpretation, this appears to require extensive information about the person(s) in this position (who may not be a senior manager of the entity providing the service) and in our view is likely to go down too far in a provider's structure. This does not appear to mirror the AFA regime, and there is no other NZ

(clause 4)	precedent for this. • On another interpretation, the requirement may be appropriate, if the intention is to refer to a member of senior management (as defined in the Financial Markets Conduct Act 2013 (**FMCA**)) with overall responsibility for the digital advice facility and oversight of the service, akin to the Australian single 'responsible manager' concept and FMA's own approach in some licensing cases. However, the definition seems to go further than this.
Question 1 - **Definition of 'specified product' (clause 4)**	• We note that the definition of 'specified product' does not include units in **cash or term PIEs or bank notice products** (as defined in the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011). These are all designated as category 2 products. We submit that the definition of 'specified product' should be amended to include these three product types given that they are non-complex category 2 products. • We note that the definitions covering **pure risk contracts of insurance** differ between the Financial Advisers Act 2008 (**FAA**) and the draft exemption notice. The intention of the difference is not clear, eg are there products that are not intended to be included under the exemption notice? We consider that the definition in the FAA should be used, so that it is clear that insurance products an adviser can advise on under the FAA are able to be the subject of a digital advice facility. If the intention is to exclude certain products, this should be explained for consultation and set out in the Information Sheet. • The definition does not include **renewals or variations to terms and conditions** of existing specified products, unlike section 5 of the FAA. We submit that, as advisers can under the current FAA, a digital advice facility should be able to provide advice on renewals and variations. If the intention is to exclude variations to products, this should be explained for consultation and set out in the Information Sheet.
Question 1 - **Needing to be provider named in Schedule 1 of the notice (refer definition of 'Provider' in clause 4)**	We have several concerns with the approach for being able to rely on the exemption notice. • Firstly, this appears to be applying a licensing regime and has the potential to cause processing delays of up to 12 months before a provider could rely on the exemption. From our experience in applying for FMCA licences it takes a significant amount of time and resource for both the FMA and the applicants to respectively draft, apply for, assess and grant a licence. Recent experience has come largely from dealing with established businesses explaining their current processes, and it seems likely that evaluating a new service not currently carried on could be more difficult and time consuming on both sides. • At this stage, the personalised digital advice we are likely to provide would be relatively simple. They will build on our current class advice tools, using an enhanced number of simple questions to advise people on how to bridge gaps based on what they have advised are their goals and/or financial situation and are likely to relate to our existing product set. They are not likely to use complex algorithms based on fast moving market information to select products from a wide variety of complex investment products for a portfolio. The proposed licensing approach therefore seems disproportionate. We consider that a better and more proportionate approach is requiring the provider to notify the FMA that they will be relying on the exemption and then the exemption containing conditions a provider must comply with when relying on the exemption. This would be a simpler more efficient approach during a transitional period which still provides protections for consumers via the notification and condition requirements. This is especially the case for a Qualifying Financial Entity (**QFE**) providing simple tools based largely on its own products. • We particularly consider the proposed licensing approach (if insisted upon) should be streamlined to take into consideration those applicants who are part of a QFE and who have already been vetted as capable and competent to give advice. The application process does not appear to give credit to those who have already met certain character, competency and capability standards (it simply asks if you are part of a QFE). • We are also unclear on how long it would take from approval of the application to getting the entity named in Schedule 1 of the exemption notice given the administrative processes necessary. Having some indication of this timing is quite important for business planning purposes.
Question 1 – **Application to groups**	• It is unclear how operating under the exemption would sit alongside QFE obligations. It would appear that if an entity in a QFE Group applies for the exemption, the QFE is automatically responsible for the personalised digital advice given by that entity. For example, section 76 of the FAA requires a QFE to ensure compliance by the group with matters in the QFE's terms and conditions, which cover the financial adviser services of the group; section 77 requires a QFE to certify that every member of the QFE group has complied with its obligations under the Act. However, the application process does not take this relationship into account (eg it does not appear to expect applications to come from the QFE for the group,

	nor does it ask whether an entity has secured its QFE's agreement to the application given that it will be responsible). Whilst it is accepted that the exemption may need to name each entity that will provide a digital financial advice service, the process should take account of the QFE relationship in the light of the requirements of the Act. Alternatively, if the FMA interpretation is that the QFE is not responsible, this should be clearly set out, explaining the reasoning. • As for QFEs under the FAA, and MIS and DIMS licences under FMCA, we would like the flexibility to make a group application to provide a digital advice facility. This would reduce the administrative burden for both entities and the FMA, and would better reflect the structure and resources of many companies. The lead entity should complete the application, with simpler agreement applications for associated entities.
***Question 1* - Notification of material change of circumstances – clause 7**	We consider that the consequences of the inclusion of clause 7 of the exemption is inconsistent with other similar legislative requirements, given that a breach of any term of the exemption is automatically the loss of the benefit of the exemption. This makes the clause an overly blunt instrument. It could lead to outcomes that are not in the best interests of clients. For example, a QFE, an MIS or derivatives licensee has to notify the FMA of such matters but does not automatically lose their licence. There needs to be a more proportionate, nuanced and consistent approach which gives certainty to providers whilst protecting consumers. A better threshold for automatically losing or suspending the exemption might be a change that materially adversely affects consumers using the particular advice service. We agree that an entity should have to notify the FMA of a material change in their relevant circumstances, but not that the loss of the exemption should automatically follow from that. We suggest that FMA should make clear that a breach of the notification term will not cause the exemptions in clause 6 to cease to apply. Should a licensee notify the FMA of such a change and if the FMA considers that adversely affects consumers then FMA should then be able to: • suspend or cancel the exemption; or • suspend or cancel the operation the particular advice tool under the exemption (we think you should be able to have multiple advice tools under one license – see section below). This would be consistent with the FMA's general enforcement approach.
***Question 1* - Definition of material change of circumstances – clause 7(3)**	We question whether some the matters set out in 7(3)(b) are material for all providers, in the context of the digital advice facility. This is particularly true given the consequences of a failure to notify, as noted above. • Clause 7(3)(b) relates to changes in the circumstances of the licensee's senior managers and directors. This currently includes where they are subject to *disciplinary proceedings under any enactment* and *an adverse finding by a court*. This is extremely broad and could have unintended consequences. For example, a senior manager could be subject to an adverse finding in an civil contract dispute unrelated to the provider's business, triggering the licensee to notify the FMA. Clause 7(3)(b) includes whether the provider is subject to an adverse finding by an approved dispute resolution scheme. Most entities, particularly large entities with diverse businesses would expect to be subject to findings against them by a dispute resolution scheme. Such findings might not be related to the advice provided by the digital advice facility. We believe the better approach is to be consistent with the MIS requirements under the FMCA. The requirements under s410 of the FMCA are more proportionate. Under Regulation 191 of the Financial Markets Conduct Regulations 2014 (**FMCR**) a provider must notify the FMA of certain matters and there is a relevancy threshold. Under the FMCR the definition of relevant proceeding or action in clause 5 is appropriately limited to matters related to the provision of financial products and services.
***Question 1* - Compliance with clauses 8(1)(b) and 8(2)**	In our view the use of the code standards creates an element of uncertainty. The Authorised Financial Adviser (**AFA**) code standards are all based on advice being provided by a natural person, and AFAs have the benefit of guidance in their interpretation. Although proposed clause 8(2) refers to necessary modifications to reflect that it's a digital advice service, without any guidance it is uncertain how to achieve compliance. It could lead to very different approaches in the market, particularly for a new market service with no existing industry standard of behaviours and potentially with providers without previous experience of financial services regulation. For example in the context of digital advice there could be different views on appropriate compliance with the following code standards: • 7 - ensuring retail clients can make informed decisions; • 9 - ensuring the service is suitable for the client; and • 10 - ensuring retail clients can make informed decisions about personalised services. We recommend that after the exemption is finalised the FMA issues guidance as to how a digital advice facility

	might meet those code standards. We consider that the guidance could take into account the Australian Securities and Investments Commission's (**ASIC**) guidance on providing digital financial product advice to retail clients (issued on 30 August 2016). However we consider the guidance would not need to be as lengthy and detailed and should evolve as digital advice services evolve. To use a specific example, ASIC has guidance on filtering. We note the guidance in the Client Filtering section of the Application Guide, but it would be good to have clarity on the FMA's expectations.
***Question 1* - Record keeping – clause 8(c)**	This obligation appears to apply even where the user does not provide personal details, or adjusts the information they provide to test how those adjustments affect the advice given. This could have major implications for data storage, and seems inefficient and unnecessarily extensive. • The record keeping requirement is exacerbated by the fact that the exemption does not set a time period after which information can be destroyed. • We believe that the requirements should be proportionate to the nature of the digital advice facility. For simple tools (based on limited data sets and rules) a provider should only be required to be able to accurately recreate permutations of the possible advice, which could be achieved by storage of the tool. This would achieve the same outcome (ability to reproduce what advice someone received) with less cost in terms of data storage. Recording of all of the advice should only be necessary where such re-creation would not be possible – for example because the tool is also dependent on data on share availability and prices at the time of the advice. • We believe that a provider should not be obliged to retain records where the person does not provide any personal details. We note that to be personalised advice, the advice must be given in respect of a named individual or someone readily identifiable by the adviser, as defined in section 15 FAA. A lack of personal details would therefore tend to indicate that recording of the 'advice' should not be required.
***Question 1* - Schedule 2 – Disclosure Requirements**	• We note that the proposed disclosure requirements in Schedule 2 are in line with AFA disclosure requirements. This goes beyond the requirements for Registered Financial Advisers (**RFAs**) and QFE Advisers for services relating to Category 2 products. We believe the content of the disclosure requirements should remain consistent with the current regime under the FAA, and that attempting to anticipate requirements of the proposed regime under the FSLAB, which have not yet received government approval or detailed public consultation is unhelpful. Imposing higher requirements where this is not required by the nature of the service goes against the technology neutral principle generally applied to setting obligations. • If disclosures are not made consistent with the current FAA regime, then we would recommend some modifications to the requirements of Schedule 2 of the exemption notice: o if no fee is payable for the digital advice, then no disclosure under Schedule 2 should be required. o it should be sufficient from a consumer protection point of view to have a link to the how to initiate the complaints process instead of having a description of our internal complaints process. o the disclosures required by both clauses (1)(f) (complaints process) and (1)(g) (disputes resolution service) should be made *after* the advice has been given. It does not seem necessary to provide them before the advice is provided as we would be unlikely to receive a complaint if a customer has not completed the process. o clause (1)(a)(i) (type of service provided) should be amended to include the word 'personalised'. Although the scope of exemption may be clear, we think it is helpful to emphasise that it's about personalised advice, especially in a client disclosure. Therefore, we consider clause 1(a)(i) should read as below: 'the types of financial adviser service provided (that is, whether the service is giving **personalised** financial advice or providing an investment planning service)' o the proposed 'no FMA endorsement' disclosure in clause (1)(h) should be removed. This goes beyond current legislative requirements relating to the provision of personalised financial advice or provision of other licensed market services. Further, it does not make sense when providers do not appear to be required to make any disclosures in relation to their regulatory or FSP registration status. It is likely to be confusing to customers and inconsistent with other regimes. For example, licensed MIS providers are not required to state in any of their offer documents that the FMA has not endorsed or approved them or their offer.

***Question 1* – Enforcement of exemption**	We note that the nature of an exemption is that it can only be relied on if the terms and conditions of the exemption are complied with. In the light of the proposed drafting of clause 7 (see comments above) and the licensing-like approach taken by FMA to granting use of the exemption, we would welcome a statement on the FMA's approach to any breaches identified, to give certainty to providers developing digital advice facilities. We assume that the FMA's normal enforcement approach would apply, despite the fact that technically the exemption automatically falls away. For example, it would not be the FMA's intention that: if a provider identifies a breach in one tool, that this would, in practice, be treated as a lapse for all tools; that each breach would result in a re-application process; or that a deemed breach of one disclosure obligation would impact all obligations.
***Question 1* - Statement of Reasons**	The official statement of reasons at the end of the exemption notice should state why providers will be required to apply a higher standard than under the current regime in respect of advice in relation to category 2 products.
Question 2	**Information Sheet**
***Question 2* -The exemption**	See comments under Question 1, clause 3.
***Question 2* - Open access tools**	We are concerned with the comments regarding 'Open access tools' and the KiwiSaver open-access tool case study. If a person has not provided any personal details then it is unclear how personalised advice has been provided, given that to be personalised advice it has to be given in respect of a named individual (or someone readily identifiable by the adviser) as per the definition in section 15 the FAA. Further, from the details provided in the example, it is not clear that the tool discussed would be providing personalised advice, as it makes no reference to information being obtained about the client's financial situation and/or goals. This example could be confused with a class based risk profiling tool. The example should be modified to reflect what is defined as personalised advice in the FAA - advice that takes into account a user's goals and/or financial situation and is given to a named person (or readily identifiable person). Class advice tools should be out of scope for discussion in this document and should not be subject to an obligation to keep records of the advice provided. As best practice, providers should be able to easily reproduce the rules that the tool is based on to illustrate how someone was given a class advice recommendation if ever queried.
***Question 2* - Understanding the exemption conditions**	We note that the Information Sheet includes a number of areas of guidance on FMA's expectations or interpretations (e.g. options providers may wish to consider for disclosure). This guidance will lose visibility once the exemption regime is in place. For ease of reference on an ongoing basis, we suggest that FMA incorporates these into a guidance sheet to be added to its Guidance Library.
Question 3	**Application form**
***Question 3* – Part 4 and 5**	The dispute resolution scheme and NZ Business Number information could be removed, as it should already be available to FMA from the FSPR and the relevant entity registers.
***Question 3* – Application to groups and Part 7**	• It is unclear how application and operating under the exemption would sit alongside QFE obligations. It would appear that if an entity in a QFE Group applies for the exemption, the QFE is automatically responsible for the personalised digital advice given by that entity. For example, section 76 of the FAA requires a QFE to ensure compliance by the group with matters in the QFE's terms and conditions, which cover the financial adviser services of the group; section 77 requires a QFE to certify that every member of the QFE group has complied with its obligations under the Act. However, the application form does not acknowledge this accountability (eg it does not appear to expect applications to come from the QFE for the group, nor does it ask whether an entity has secured its QFE's agreement to the application given that it will be responsible). Whilst it is accepted that the exemption may need to name each entity that will provide a digital financial advice service, the process should take account of the QFE relationship in the light of the requirements of the Act. Alternatively, if the FMA interpretation is that the QFE is not responsible, this should be clearly set out, explaining the reasoning. • As for QFEs under the FAA, and MIS and DIMS licences under FMCA, we would like the flexibility for entities to make a group application to provide a digital advice facility. This would reduce the administrative burden for both entities and the FMA, and would better reflect the structure and resources of many companies. The lead entity should complete the application, with simpler agreement applications for associated entities.

Question 3 – Part 9	We suggest that the question reads, 'What **personalised** financial adviser services does the digital advice service relate to'?
Question 3 – Part 10	It is unclear as to how the application would work in relation to specific tools and products. For example, if a provider only includes one at the time of application, will it need to reapply if it introduces a new tool for a different product, or will it get a general exemption to provide personalised digital advice? The wording of the exemption seems to imply the latter (and this is our strong preference), but with the specific questions about the tools and products on the form it makes this unclear.
Question 4	**Declarations**
Question 4 – Use of declarations	We are unclear why digital advice facility providers must have directors and senior managers vetted to take advantage of the exemption, whilst vetting of directors and senior managers is not included in the current FAA or applied to QFEs. We suggest that this is removed to create a technology neutral regime. Alternatively, If this is thought necessary and intended to facilitate transition to the new regime under the FSLAB, then this should be stated.
Question 4 – Use for FMCA licensed entities	The Good Character section of the Application Guide indicates that existing licence providers do not need to provide forms for directors and senior managers where an entity has 'previously provided … good character declarations'. We support this differentiated approach. However, this should apply to all directors and senior managers already holding positions in a licensed provider (ie not just those who have provided declarations, as these have not been required for new appointees notified to the FMA after the licence was granted).
Question 5	**Application Guide**
Question 5 – 3. Ongoing obligations	The guide notes that providers will be required to maintain the minimum standard as part of their ongoing obligations. However, it is not clear how the minimum standards relate to the terms and conditions contained in the exemption notice. We suggest that the basis for the requirements should be more clearly explained.
Question 5 - Capability	Overall the questions in this section seems to assume there will be a single static sophisticated advice service through the life of the entity's use of the exemption, with almost one application per service, rather than per entity. For large organisations what is more likely is an array of automated advice services with the majority being simple personalised advice tools being launched over a period of time and that evolve and all need to fit within the umbrella of a capable and competent organisation. A single service approach would seem to require multiple and repeated license applications. Such an approach would be disproportionate for most simple service and slow innovation, without seeming to provide additional consumer protection. This is why we prefer a 'notice plus conditions' exemption approach over a license regime under the current FAA, especially for QFE advising on their own products.
Question 5 - Risk Management Processes	In our view, it should be made clear that a provider does not have to suspend an entire digital advice service if there is an error in one part of the tool that does not affect another part of the tool. For example, if a KiwiSaver advice tool was made up of two sections which had one section to review and receive personalised advice on contribution levels and then another section to review and receive personalised advice on fund selection, an error in the contribution review section should not mean that the fund review section should be suspended.
Question 5	There are a number of references to the FMCA in the Guide (eg title and first page), which should be amended to refer to the FAA.
Question 7	**Other comments**
Policy rationale	The FMA does not appear to have published material explaining its policy decisions, or to have published a regulatory impact statement, at this stage. Providing consultation feedback in the absence of an understanding of the rationale is difficult and potentially inefficient, and we would encourage the FMA to publish, or publicise, its policy reasons.
Feedback summary – *if you wish to highlight anything in particular*	

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: **11 December 2017** Number of pages: **3**

Name of submitter: [redacted]

Company or entity: **Medical Assurance Society New Zealand Limited**

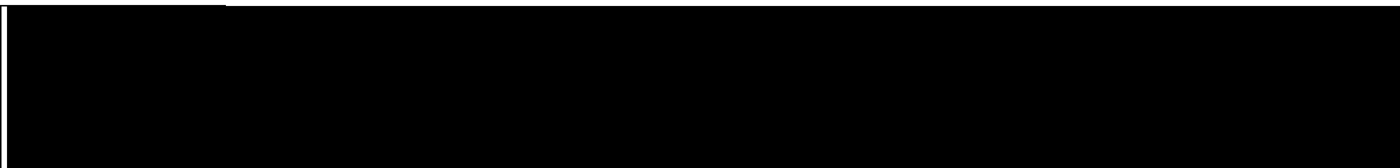
Organisation type: **Financial Service Provider / QFE**

Contact name (if different):

Contact email and phone: [redacted] [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q1	Guidance to support what constitutes a *material* change of circumstances that adversely affect a provider's ability to provide robo-advice (clause 7(3)(a)) would be beneficial. For example, to clarify the materiality of planned outages for system maintenance, or unscheduled outages of a short-term nature both of which may have an adverse impact but of a temporary nature. In our circumstances, any adverse impact from an outage of an any duration can be mitigated to some extent by redirecting clients to other channels (e.g. telephone or face-to-face) from which clients can access advice. The requirement to keep *written* records is not technology neutral and requires clarification to the extent that digital records may be kept. In fact, clause 8(c)(iii) requiring copies to be kept of algorithms and software appears contradictory to requiring "written" records, or does it imply that there is an expectation that all software code be retained in written form? We question the exclusion of Code Standard 8 from the list of code standards that must be complied with under clause 8(b)(i). Code Standard 8 requires that the nature and scope of a personalized service be clearly and effectively communicated as well as ensuring that clients are made aware of the extent of any limitations on the scope of a personalized service, and any implications of those limitations on the service. These factors seem fundamentally important to ensuring adequate consumer protection and awareness in the provision of any advice services. We do note that complying with the disclosure requirements set out in Schedule 2 would appear to satisfy the requirements of Code Standard 8 but for consistency it would be preferable that it still be included in clause 8(b)(i) as elements of other included code standards are also addressed elsewhere in the requirements of the exemption.
Q2	We support the emphasis that is placed on the importance of disclosure to clients due to the limited human interaction that digital services are provided with. However, disclosure needs to be an effective tool for consumers as opposed to a compliance exercise for providers. Care must be taken to strike the right balance of disclosure in that it addresses the risks that clients should be aware of and understand, without it being so lengthy that they are unlikely to read it (as is the case with the current QFE and AFA disclosure requirements). To this extent it is encouraging to see the suggested approaches set out under the section "how to disclose".

	Further to the comment on question 1 [above] that Code Standard 8 should be included in the list of standards that providers must have procedures in place to give reasonable assurance, it should also carry through into the "conduct" section of the information sheet. Further to the comment on question 1 [above] re record keeping. We suggest that reference to "written" records be removed to ensure technological neutrality. Requiring records to be kept for "open access" advice in which the client is not personally identified is problematic. Whilst we can see the benefit of such records in assessing whether a digital advice service is performing as expected, retention of 'open access' records does not provide any direct consumer benefit. Categorising such records for storage is difficult with no personal identifiers to assign records to. It could create additional cost to have to differentiate between anonymous and actual customer records. The use of IP addresses isn't reliable as an identifier in instances where a user has accessed the digital advice facility from different devices and/or location, or multiple users of shared devices. In the event of a client complaint, it is therefore difficult, if not impossible to retrieve the relevant records and reliably attribute them to a unique user.
Q3	Not requiring directors and senior managers to complete the good character declarations where the applicant is an existing licensee under the FMC Act is a practical approach. However, this should also be extended to applicants that are also licensed under the Insurance (Prudential Supervision) Act which applies a similar level of good character requirements upon directors and senior managers. A question though is why the higher burden of character on applicants for an exemption to provide advice digitally? Applicants who are QFEs should also, and perhaps more so, be considered for a waiver of completing the character declarations (which add a layer of cost and time burden on any application). QFEs are already licensed to provide financial advice services, having demonstrated their competency to do so on an ongoing basis under the Financial Advisers Act which remains the current legislative framework for the provision of financial advice. The application form itself should provide some clarity on whether declarations are provided. There is a tick box for whether the applicant is an FMC Act licensee, but it is unclear without cross referencing the application guide what is required, and even then, the extent that questions 14-15 need to be completed.
Q4	The declaration form (and the application guide) is silent as to what extent the Criminal Records (Clean Slate) Act applies, or does not apply, in respect to questions 1-3. Clarity on this should be provided. The requirement that each and every director and senior manager makes a declaration seems particularly onerous, particularly given that the exemption will only remain in force temporarily until participants are licensed under the new advice regime. The Financial Services Providers Register also provides a layer of probity around a person's fitness which includes director disqualification and criminal record checks. Given the temporary nature of the exemption, this is another mechanism that can provide assurance around director and senior managers' character.
Q5	Noting the point raised in Q4 [above] as to the extent that the Criminal Records (Clean Slate) Act applies in respect to the director/senior manager declarations. Apart from that. the application guide itself appears to be a comprehensive tool to support making an exemption application.



Q7	No further comments.

Feedback summary – *if you wish to highlight anything in particular*

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Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

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Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 2

Name of submitter: [redacted]

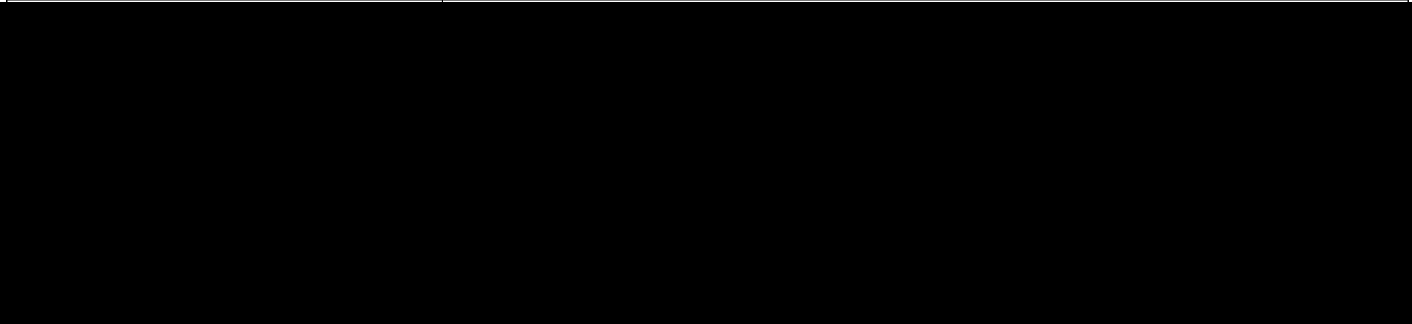
Company or entity: Mercer (N.Z.) Limited

Organisation type: Manager, managed investment schemes / Qualifying Financial Entity

Contact email and phone: [redacted] [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
1. Do you have any comments on the draft exemption notice?	With respect to clause 8(1)(a), there is only a requirement to disclose Schedule 2 information to 'retail' clients. It is difficult to see how a digital advice facility provider (Provider) would know whether the client was retail or wholesale. With respect to the use of the word 'client' and the obligations which attach to a Provider when providing digital advice, it is otiose to consider the casual user (User) of the digital advice facility (Facility) a client for personalised financial advice in circumstances where there is no requirement for the user to provider either their name or contact details. We submit that a User of a Facility does not become a client unless or until they provide identifying details i.e. name and contact details. The advantage of this approach for the individual investor is that they are more likely to experiment with a range of scenarios where they don't have to either identify themselves or provide 'real' personal information. This approach will also help them gain familiarity with digital tools and make investor experience of them more stimulating. The advantage of this approach for the Provider is that it serves to validate and/or extend the personal data the Provider holds on the client thereby enhancing the Provider's service offering and ability to more meaningfully meet the client's need. It also means that there are more realistic limits on the requirement to keep records of all client input/provider output.
2. Do you have any comments on the draft information sheet?	The draft information sheet is a useful summary of the intended application of the exemption. As stated above, we are concerned that personalised digital advice is considered to be provided in circumstances where the name and contact details of the user are not required to be captured. We also express concern that the record-keeping requirement on page 13 refers to a requirement to retain 'written records' whereas many of the records may be in digital formats.
3. Do you have any comments on the	No comments on the form.

draft [exemption] application form?	
4. Do you have any comments on the draft declaration form?	No comments on the form.
5. Do you have any comments on the draft application guide?	No comments on the guide other than to note in respect of point 2 (Minimum standards), that we would expect all Providers to be able to substantively meet the minimum standards e.g. all relevant processes should be documented.



7. Do you have any other feedback or comments?	We have no further feedback.

Feedback summary – *if you wish to highlight anything in particular*

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Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 1

Name of submitter: [redacted]

Company or entity: Milford Asset Management Limited

Organisation type: Licensed Manager of managed investment schemes and licensed DIMS service provider

Contact name (if different):

Contact email and phone: [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q 1	In regard to the definition of "digital advice facility", the recipient of the financial advice will be "directly involved" in the process and, sometimes, an AFA may be involved if a customer elects to talk to a human during the process. We therefore suggest part (b) of the definition be clarified accordingly. We note the terms listed in the definition of "specified product" are generally defined in the Financial Advisers Act (FAA) but not in the Notice itself. We consider it would be helpful to preface the Notice with a statement that terms defined in the FAA have a corresponding meaning when applied to the Notice. Section 8(1)(a) imposes an obligation on the advice provider to disclose the Schedule 2 information to each retail client "before, or at the same time as, the client receives any financial advice..." The question arises as to what will constitute adequate disclosure? Will, for example an email sent to the client at the time of giving advice be sufficient, or is some other form of disclosure contemplated here? Additional clarity as to the requirements for effective disclosure would be helpful.
Q.3	The exemption application form appears to contemplate only a single entity applicant. For some applicants operating within a corporate group structure, more than one legal entity may be involved in the provision of the digital advice or separate entities within the same group may each be providing a digital advice variant. Is it the intention in such cases that the parent applicant make the application with the subsidiary entity effectively acting as an outsourced provider of part of the digital advice service, or alternatively, would the intention be that an "authorised body/licensee" type of model apply? We do note however that neither of these approaches may be the intention of the service provider or fit well with the applicant group's approach to provision of the service. In our view it would be preferable and more efficient for the application form to accommodate more than one applicant from within a Group.

Feedback summary – *if you wish to highlight anything in particular*	
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.	
Thank you for your feedback – we appreciate your time and input.	

MinterEllisonRuddWatts

15 December 2017

BY EMAIL: consultation@fma.govt.nz

Consultation Team
Financial Markets Authority
Level 5, Ernst & Young Building
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AUCKLAND

Consultation: Exemption to enable personalised digital advice

1. **Introduction**

1.1 This submission is made on behalf of MinterEllisonRuddWatts, a national law firm with one of New Zealand's leading financial services law practices. It relates to the *Consultation: Exemption to enable personalised digital advice* (the **Consultation Paper**). The submission reflects our own views, and not necessarily those of any of our firm's clients.

1.2 We have previously submitted extensively on the topic of digital advice:

(a) In February 2016 we made a submission on the November 2015 Options Paper published by Ministry of Business, Innovation and Employment (**MBIE**). Our submission followed the findings of an in-house survey of 80 young lawyers in our Auckland office and a further focus group of six young lawyers – i.e. Millennial Professionals (**Options Paper Submission**).

(b) We made a further submission in April 2017 on the consultation draft of the Financial Services Legislation Amendment Bill. In this submission we set out our recommendations, based on detailed research of overseas jurisdictions, as to how MBIE could ensure that the eventual digital advice regime is fit for purpose – in that it provided the best outcomes for consumers, advice providers and the New Zealand fintech industry (**FSLAB Submission**).

(c) Lastly, in July 2017 we made a submission on the FMA's consultation paper on the proposed exemption to facilitate personalised robo-advice. Our two key overarching submissions were that we were supportive of a class exemption to enable digital advice at an earlier date and that digital advice should not be regulated through investment limits and restrictions on the scope of services, but rather capability and disclosure requirements (**Exemption Submission**).

1.3 Most of the recommendations and issues raised in our previous submissions have been fully or substantially addressed in the draft Financial Advisers (Personalised Digital Advice) Exemption Notice (**Draft Exemption**), the associated information sheet (**Draft Information Sheet**) and the draft application documents (**Draft Application Documents**). Therefore, except for two specific comments on the regime set out below and some minor comments, we support the Draft Exemption and the associated documentation. Our main comments are:

(a) the Draft Exemption should clarify that any portfolio rebalancing services incidental to the provision of personalised digital advice will also be captured by the exemption and will not be regulated as discretionary investment management service (**DIMS**); and

(b) "specified products" should be expanded to also include other low risk financial products so that investors using digital advice facilities have access to a more appropriate and comprehensive investment options.

1.4 In this submission, we have set out:

(a) in Part A, our further details on the two specific comments summarised above; and

(b) in Part B, other more minor comments on each of the documents the subject of the Consultation Paper.

PART A: SPECIFIC COMMENTS ON THE DRAFT EXEMPTION

2. Exempting portfolio rebalancing services and interaction with DIMS

2.1 We previously raised in both our FSLAB Submission and Exemption Submission that portfolio rebalancing services and other discretionary investment services that are provided incidentally to the provision of personalised digital advice should be regulated as part of the digital advice regime. Without an express exemption, currently automatic portfolio rebalancing may be captured as a DIMS under the Financial Markets Conduct Act 2013 (**FMCA**) and/or the Financial Advisers Act 2008 (**FA Act**).

2.2 Based on our research of the digital advice and financial planning platforms in the international market, particularly US-based businesses, many of the most successful platforms have an automatic rebalancing or other automatic investment component. From speaking to industry participants, we understand that at least some of the New Zealand digital advice providers intend to provide rebalancing services as part of their digital advice facility.

2.3 Clause 5(2) of the Draft Exemption expressly provides that the exemption does not apply to a DIMS. We agree that traditional DIMS should be excluded from the exemption as it may be difficult for a digital advice algorithm to satisfy the FMCA requirements in connection with DIMS.

2.4 However, we submit that any automatic portfolio rebalancing that is provided *as part of* a digital advice facility should be regulated by the digital advice regime (and therefore be expressly exempted in the Draft Exemption) and not as a DIMS, even if it may meet the technical definition of a DIMS in the FMCA.

2.5 Exempted services should be limited to DIMS services that are *incidental* to the provision of personalised digital advice and involve limited discretions (i.e. limited to rebalancing in accordance with an asset allocation plan created by the digital advice facility for that client).

2.6 We acknowledge that the interaction between DIMS and digital advice is a complex issue, but nevertheless consider it beneficial for automatic portfolio rebalancing services to be expressly permitted under the Draft Exemption so that the New Zealand market can also benefit from the successful business models described in paragraph 2.2 above. This is also supported by the following reasons (which we previously raised in our FSLAB Submission):

(a) Compared with traditional DIMS, any incidental DIMS is lower risk as the provider's discretion is limited to rebalancing in accordance with an asset allocation plan that has been agreed to by the client.

(b) It is sensible to regulate digital advice providers within the framework of digital adviser regulation rather than DIMS as their principal business is providing advice

(whereas the DIMS regulatory framework is similar to the regulation of financial products).

(c) Enabling digital advisers to execute investment plans for clients will produce better consumer outcomes, as it removes one of the barriers in consumers not taking action to implement the financial advice they received.

2.7 We submit that the FMA should carefully consider the circumstances under which digital advisers should be regulated as financial adviser providers and when they are regulated as DIMS providers. If the intention is that portfolio rebalancing services incidental to digital advice should not be exempted, this should be expressly clarified in the Draft Information Sheet.

3. Expanding the definition of "Specified Product"

3.1 The Draft Exemption provides that the exemption only applies to a financial adviser service to the extent that it is provided in relation to 1 or more "specified products". These are:

(a) a bank term deposit;

(b) a call building society share;

(c) a call credit union share;

(d) a call debt security;

(e) a consumer credit contract;

(f) a pure risk contract of insurance;

(g) a debt security issued by the Crown;

(h) an interest in a managed fund;

(i) a quoted equity security; or

(j) a quoted debt security.

3.2 We agree that certain complex and/or high risk financial products (e.g. derivatives) should be excluded from the Draft Exemption. Particularly for inexperienced investors (which we expect will make up most of the clientele for digital advice providers), it may be beneficial, at least at this stage, to only be able to receive financial advice on high risk products directly from a human adviser, who will be able to more adequately discuss the risks involved with the investor.

3.3 However, we submit that the definition of Specified Product unnecessarily excludes certain other financial products (including category 2 products under the FA Act) such as:

(a) non-bank term deposits; and

(b) a unit in a cash or term portfolio investment entity;

3.4 While some of these additional financial products may be higher risk than the products currently included in the definition of Specified Products, it is not clear how the risks are sufficiently high to justify being excluded from the Draft Exemption.

3.5 We submit that by ensuring that the range of products a digital advice provider can provide advice on is as broad as reasonably possible leads to better consumer outcomes as it means an investor is not unnecessarily precluded from a product that may be more suitable to their investment profile.

PART B: MINOR COMMENTS ON THE CONSULTATION PAPER DOCUMENTS

4. Draft Exemption

Requirement that "providers" must be registered under the FSP Act

4.1 The definition of "provider" in the Draft Exemption provides that the entity must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) in respect of a financial adviser service. The Draft Application Guide then provides that the most appropriate category of registration is "Wholesale and/or generic financial adviser service".

4.2 We agree that digital advice providers are clearly captured as "financial service providers" for the purposes of the FSP Act and therefore should be registered appropriately on the register of financial service providers (**FSPR**).

4.3 However, we submit that registration for the category of "Wholesale and/or generic financial advice" may be misleading and/or confusing given that the digital advice providers will be able to provide *personalised* advice to *retail* clients.

4.4 We do not consider that the registration for the category of "wholesale and/or generic financial adviser service" is in line with the purpose of the FSP Act, which includes to "promote the confident and informed participation of business, investors and consumers in the financial markets". Furthermore, it is also a requirement under the FSP Act that a financial service provider must not be in the business of providing a financial service unless that person is registered for *that service* under the FSP Act (although technically the relevant "financial service" as defined in the FSP Act will be "a financial adviser service" under section 5(1)(a)).

4.5 We submit that the FSPR should include an additional category (or amend an existing category) that is appropriate for digital advice providers.

Condition to keep written records does not include time period

4.6 The Draft Exemption provides that the provider must retain written records about the digital advice facility. We agree that digital advice providers should keep adequate records, including to ensure that its services can be regularly reviewed for compliance with the conditions of the Draft Exemption. However, neither the Draft Exemption nor the Draft Information Sheet clarifies how long providers must retain these records.

4.7 We submit that the Draft Exemption should provide that records must be retained for a minimum period of 7 years, in line with code standard 13 and the record keeping requirements in the FMCA.

Drafting comments

4.8 We submit that clause 5(1) be amended as follows:

> *Subject to subclause (2), ~~T~~the exemptions in clause 6 apply to a financial adviser service to the extent that it is provided in relation to 1 or more specified products.*

5. Draft Information Sheet

Clarity on examples providers should consider

5.1 As noted in our Options Paper Submission and FSLAB Submission, we have been told by digital advice consumers that they are concerned to know that they are being provided with sufficient information about the digital adviser and the service being provided. The disclosure items in Schedule 2 substantially reflects the recommendations for optimal disclosure set out in our FSLAB Submission, which was based on lessons learned from overseas regulators.

5.2 In particular, we consider it important that such information is communicated to clients in a clear, concise and effective manner. To assist digital advice providers in achieving this, it is critical that the Draft Information Sheet provides clear instructions on the types of information a provider needs to include in its disclosure.

5.3 Our view is that it would be beneficial if the "Our comments" section is expanded so that the Draft Information Sheet touches on each item of disclosure set out in Schedule 2, instead of solely focusing on the "nature and scope of the service", which is only one of eight requirements.

5.4 We agree it is helpful that the FMA's comments include examples but consider that these examples can be further improved by clarifying exactly which clause in schedule 2 the example relates to. For example, the example under "Explaining the scope of the advice being offered" appears to relate to the requirement in clause 1(a) of schedule 2 but in reality, may be more relevant for the purposes of the requirement in clause 1(b) of schedule 2 instead.

6. Draft Application Form

Collection of information from clients

6.1 Our FSLAB Submission pointed out that overseas regulators have noted that digital advice raises specific issues in respect of the suitability of the advice it provides to clients. Specifically, we identified that digital advice providers should be required to:

(a) ensure that their information gathering methods elicit sufficient information;

(b) test for inconsistencies in answers given by a client;

(c) explain to the client why a portfolio was selected for them; and

(d) identify where a client requires advice outside of the scope of that the digital advice facility is capable of providing.

6.2 The "client filtering" requirement addresses the requirement set out in paragraph (d) above but the other points recommendations do not appear to be adequately covered in the Draft Application Form.

6.3 We submit that the Draft Application Form should require digital advice providers to provide additional information on these points as well.

Drafting comments

6.4 We submit question 14 should be amended as follows:

> *"How many directors and senior managers responsible for digital advice services are there in your entity ~~are you supplying the details on behalf of for this application~~?"*

6.5 Our view is that the existing question may be interpreted to suggest that it is optional how many directors and senior managers the digital advice provider submits details for.

7. Draft Declaration Form

We do not have any comments on the Draft Declaration Form.

8. Draft Application Guide

Application form questions should assist providers to meet the minimum standards

8.1 As mentioned in our previous submissions, we consider it crucial to the successful operation of digital advice facilities that providers are required to have adequate governance and compliance arrangements. We acknowledge that this is addressed in the minimum standards set out in the Draft Application Guide. We understand that the intention is that in the Application Form, applicants must demonstrate how they intend to comply with these minimum standards.

8.2 Our view is that to ensure that providers give serious thought to the minimum standards and to incorporate them into their governance and compliance processes it would be more efficient and effective to phrase the questions in the Draft Application Form to better mirror the minimum standards. As drafted, it may be possible for an applicant to answer all of the questions in the Draft Application Form but continue to fail to evidence all of the minimum standards set out in the Draft Application Form.

8.3 For example, in the IT Systems section, one of the minimum standards is that the provider must have proper legal arrangements with any third party software providers, including licences for software and contracts for maintenance and support. However, none of the questions refer to these arrangements.

Drafting comments

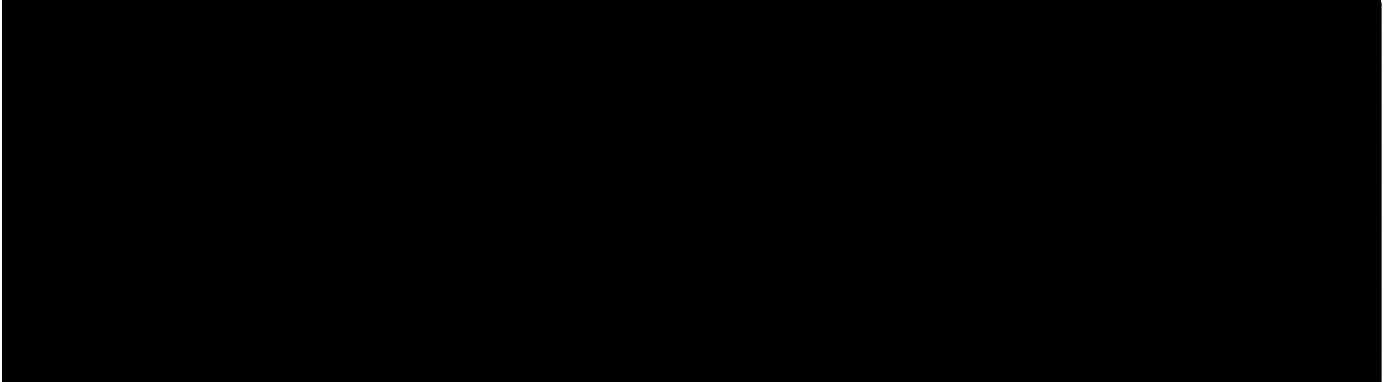
8.4 In the Getting Started Section, under paragraph 1 (FSP Registration), the reference to 'Wholesale and/or generic financial advice' should be a reference to 'Wholesale and/or generic financial adviser services'.

8.5 In the Risk Management section, under paragraph 23(a), there is a rogue "n" in the first sentence.

8.6 In the Risk Management section, in the table in paragraph 25(c), there is an "*" besides "Payor's name" but it is not clear what this is referring to.

Thank you for taking the time to consider this submission. Please contact us on the details below if you wish to discuss any of the matters raised in this submission.

Yours faithfully
Minter Ellison Rudd Watts



NEW ZEALAND
BANKERS ASSOCIATION

Submission

to the

Financial Markets Authority

on the

Consultation Paper: Exemption to enable personalised digital advice

19 December 2017

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About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following seventeen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - China Construction Bank
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - Industrial and Commercial Bank of China (New Zealand) Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation Paper: Exemption to enable personalised digital advice (**Consultation Paper**) and commends the work that has gone into developing the Consultation Paper.

4. If you would like to discuss any aspect of the submission further, please contact:

Comments on the draft exemption notice

Definition of 'digital advice facility'

5. NZBA submits that the definition of 'digital advice facility' (**DAF**) should be amended as follows:

Digital advice facility means a digital facility that provides a personalised service to a client

6. A consequential amendment would also need to be made to cl 6 as follows:

   … in respect of that financial adviser service to the extent that the service is provided through a digital advice facility.

7. NZBA considers that this definition is appropriate because:

   (a) Using a definition that directly connects 'digital' with the provision of a personalised service is the simplest way to capture the nature of digital advice not currently permitted under the Financial Advisers Act 2008 (**FAA**).

   (b) Using the words 'personalised service' within the definition is not only simple, but it also gives providers certainty that the Exemption will not inadvertently capture existing digital services that providers believe are class services.

   (c) Using the words 'digital facility' is broad enough to capture all non-human facilities providing advice, while also being sufficiently certain to operate as a gateway to the Exemption.

   (d) The reference to 'a computer program using automated algorithms' is too narrow. It appears targeted towards instances where an end-to-end authorised financial adviser (**AFA**) personalised experience is replaced with a sophisticated computer algorithm. We believe this narrower definition will not enable providers to offer more basic personalised service offerings to their clients. Offering more personalised versions of current digital class services and/or relatively simple digital personalised services (that are not permitted under the current regime) will have the biggest impact by enabling customers access to financial advice through digital channels, thereby assisting them to make informed day-to-day financial decisions.

   (e) Additionally, this definition accommodates hybrid business models where there is a collaboration between human and DAF; involvement of any kind by a human should not preclude reliance on the exemption. For example, personalised financial advice generated by a DAF which is transmitted by a human (see s 10(3) of the FAA) should be captured by the exemption (for the avoidance of doubt, the human in this scenario exercises no judgement in respect of the advice provided).

Definition of 'specified product'

8. The definition of 'specified product' should be amended to include:

   (a) Units in cash or term PIEs or bank notice products (as defined in the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011). These are all designated as category two products.

   (b) Renewals or variations to the terms and conditions of existing specified products, as in s 5 of the FAA.

Clause 7: Provider must notify FMA of material change of circumstances

'Material change of circumstances'

9. Clause 7(3)(a) provides that a 'material change of circumstances' is 'a change that adversely affects the provider's ability to provide the financial adviser service through the digital advice facility in an effective manner'. We read that to mean that all adverse changes, regardless of whether they are *materially* adverse, will need to be reported. NZBA considers that requirement is too broad; there is a risk that any business interruption, however minor (for example the outage of a website), could necessitate a report. Accordingly, NZBA submits that cl 7(3)(a) should be amended so that only materially adverse impacts are required to be reported.

10. Additionally, NZBA seeks clarification of the meaning of "in an effective manner" as that phrase is used in cl 7(3)(a).

11. Finally, we suggest that the circumstances listed in cl 7(3)(b) should be restricted to matters that are linked to cl 7(3)(a) (ie they *materially* adversely affect the provider's ability to provide the DAF in an effective manner). That would align the clause with reg 191 of the Financial Markets Conduct Regulations 2014.

Timeframe for notification

12. Clause 7(1) provides that a provider relying on the exemption must notify FMA within five working days of a material change of circumstances. NZBA considers that a five working day timeframe is too short, relative to the consequences of non-compliance with the clause (that being expiry of the exemption).

13. We consider that the requirement should be revised so that it is consistent with the notification requirement for market services licensees under s 412 of the Financial Markets Conduct Act 2013 (**FMCA**). That section provides that a report must be made to FMA 'as soon as practicable' after the licensee has formed the belief that a material change of circumstance has occurred. NZBA submits that this requirement is more appropriate, as five working days may be too short to properly evaluate whether an issue constitutes a material change of circumstances.

14. Finally, NZBA considers that care must be taken to ensure that, where possible, requirements under the exemption align with and do not duplicate procedures and controls under existing licence regimes. For example, the requirement to notify FMA if a senior manager is subject to disciplinary procedures (or any other matter set out at cl 7(3)(b)) is unnecessary if a provider is already subject to another licensing regime administered by the FMA and will create an additional and superfluous administrative burden.

Consequences of a failure to notify

15. NZBA considers that cl 7 is inconsistent with other similar legislative requirements in that breach automatically triggers the loss of the benefit of the exemption.

16. Our understanding is that cl 7 is intended to facilitate supervision, rather than being related to the nature of the personalised advice service. Accordingly, NZBA considers that cl 7 should be amended so that breach will not cause the loss of the benefit of the exemption. Instead, FMA could take action by suspending or cancelling the exemption as a whole or for a particular DAF. This would be more consistent with the FMA's general enforcement approach.

Clause 8: Conditions of exemptions

17. The Consultation Paper proposes that personalised digital advice given in respect of category two products will be subject to the same standards as personalised digital advice given in respect of category one products. We appreciate this reflects the impending removal of the distinction between category one and category two products in the new FAA regime. However, we believe that pre-empting this change is likely to result in providers not providing financial advice through a DAF on category two products until the new regime comes into force. This would be unfortunate, as personalised digital advice for category two products appears to be a key area where customers might benefit from the additional assistance that personalised digital advice offers.

18. With respect to the record keeping requirements, NZBA seeks clarification of the following matters:

    (a) Is there an obligation to maintain a record of the matters set out at cl 8(a) and (b)?

    (b) The exemption does not provide a timeframe for record retention. NZBA considers that any timeframe should be consistent with the requirement contained in the Code of Conduct standards (**Code Standards**) (that being 7 years).

19. With respect to the application of the Conduct Standards, these standards currently apply to human-to-human interactions and it is hard to see how they will apply to the provision of personalised digital advice. We appreciate the thinking FMA have already given to this topic in light of the proposed exemptions. Nevertheless, NZBA recommends that, after the exemption is finalised, FMA issues guidance as to how a digital advice facility might meet those code standards. For example:

    (a) Code Standard 8, which requires customer agreement to the scope of services, will not apply. This is helpful. However, Code Standard 9 requires that the adviser '…must take reasonable steps to ensure the personalised service is suitable for the client, having regard to the agreed nature and scope of the personalised service provided'. NZBA seeks clarification as to whether FMA expects the provider and the customer to 'agree' a scope of services, notwithstanding the omission of Code Standard 8. If so, what might agreement look like in a digital context?

    (b) Some personalised digital advice activities might involve one-way interactions (as compared to AFA interactions with clients that are two-way). To satisfy Code Standard 6, the AFA must take reasonable steps to ensure that the client understands the communication. It will be helpful to discuss with FMA what constitutes 'reasonable steps' in the context of a one-way personalised digital advice interaction.

Schedule 1: Providers

20. NZBA queries whether it is necessary to list the names of approved providers of DAF at Schedule 1. This is likely to require frequent updates as more providers are granted exemptions, and therefore create an administrative burden. From a practical perspective, it makes more sense for this list to be published on the FMA website.

Schedule 2: Information to be disclosed

21. NZBA seeks clarity as to the meaning of the phrase "that a reasonable retail client would find to be reasonably likely to materially influence the provider in providing the service".

22. NZBA also welcomes guidance on how the disclosure conditions can be satisfied in a way that has regard to the nature of the DAF, and what makes practical sense for the provider and the customer.

Other comments

23. NZBA submits that the exemption should also provide that there has not been a breach of the exemption where a failure to meet a condition is minor or technical only. This will avoid potential criminal liability arising from a breach of the underlying provision in the FAA due to a minor or technical failing on the part of the provider.

24. We consider that such a clause is appropriate from a general policy perspective, as well as from the perspective of encouraging providers to use the exemption.

Comments on the draft information sheet

25. The information sheet includes an example of a KiwiSaver open access tool.

26. First, this case study raises the question of whether the provider is providing personalised advice to "a readily identifiable client" (i.e. satisfying s 15(a) of the FAA), or advice on a class basis. Many open access tools (including those which provide advice in respect of KiwiSaver fund choice) are currently provided on a class advice basis. As currently worded, the case study could be read as implying that a tool of this sort necessarily involves providing personalised advice, and therefore that providers must rely on the exemption to continue offering similar tools. Accordingly, NZBA considers that the case study should use a scenario that is clearly a personalised advice scenario.

27. Secondly, the example assumes that Aaron is automatically identifiable as the same person if he uses the same open access more than once. Online identification is far more complicated than the example suggests.

28. Aaron is a readily identifiable client if Aaron is logged into a provider's system in a manner that enables the provider to identify that it is Aaron. If Aaron does not log in, Aaron will be identified as a user, assuming the tool was configured to track and remember unique, anonymous visitors. If Aaron uses the same device but a different browser the user tag will be different. Even if Aaron uses the same device and same browser, unless he is authenticated, we could not be certain that it is Aaron, as it might be a different user using the same device.

29. If Aaron uses a system such as a customer app that does not tag users, or the tracking is cookie based and Aaron has turned off his cookies, Aaron would not be tagged (identifiable as a user) at all.

30. Tracking users (who do not authenticate themselves) and recording their usage (meta data) is becoming increasingly problematic from a local and international privacy law perspective because it is now far easier to reverse engineer what is initially intended to be anonymised data. Additionally, providers are coming under increased legislative pressure regarding how they collect, hold and use personal

information. Therefore, FMA should consider whether the customer benefit derived from the proposed reporting requirements is appropriately balanced against customers' preferences for less individualistic and intrusive tracking, and does not impose an additional unintended privacy law compliance burden.

31. We suggest that any required reporting be made in relation to identifiable individuals, as opposed to usage of a DAF (where we may not know who our user is). We also hope that the FMA's interpretation of what constitutes digital class advice will follow that taken in FMA's recent KiwiSaver Sales and Distribution Guidance.

Comments on the draft application form

32. Questions 3-8 of the application form require the provision of an FSP number and other identification documentation.

33. NZBA seeks clarification of how those questions should be completed for a provider that has a number of different entities forming a group. In particular, whether separate entities within a group are required to submit separate applications. That is because there may be instances where the applying entity is responsible for the provision of the personalised digital advice, but a customer of another entity within the group relies on the advice.

34. It is also unclear how the application process will sit alongside QFE obligations. It would appear that if an entity in a QFE Group applies for the exemption, the QFE is automatically responsible for the personalised digital advice given by that entity (see ss 76 and 77 of the FAA). However, the application form does not acknowledge this accountability. While Schedule 1 may require a list of entities that will provide a DAF, NZBA considers that the process should also take account of the QFE relationship in light of the FAA's requirements.

35. The application form also requires providers to list information about the type of products that it will provide advice on through their digital advice service. NZBA seeks to clarify how this will operate when a provider has not yet confirmed the range of products it will provide advice on. Additionally, to the extent that a provider contemplates the provision of advice on an additional product, will an additional exemption application be required?

36. Finally, the 'capability' section (page 18-19 of the Consultation Paper) appears to replicate information provided under the 'good character', 'risk management' and 'IT systems' sections on the application form. Accordingly, NZBA considers that section of the application form is surplus to requirements.

Comments on the draft application guide

37. The 'good character' section of the application guide indicates that existing licence providers do not need to provide forms for directors and senior managers where an entity has 'previously provided … good character declarations'. NZBA supports this approach, but notes that such declarations were only provided at licensing. Directors and senior managers appointed and notified to the FMA after a licence is obtained are not required to complete declaration forms. However, it would seem disproportionate to require additional information given they already hold positions in licensed entities.

38. NZBA also considers that flexibility in both minimum standards and risk management may cause confusion for providers that are required to obtain approval. NZBA considers that the minimum standards should apply to all providers equally as the same level of risk applies in each instance. However, we acknowledge (and agree) that risk management should be commensurate with the size and complexity of the provider.

39. Finally, the 'ongoing obligations' require that minimum standards are maintained, however, it is not clear how those minimum standards interact with cl 8 'conditions of exemptions'.

Other comments

40. NZBA notes that there is no time-frame for the processing of exemption applications by FMA; a timeframe is necessary to give applicants an opportunity to effectively plan go-to-market strategies.

41. Additionally, the guidance does not provide for a formal appeals process for exemption applications that are rejected or withdrawn.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date:	11 December 2017	Number of pages:	2
Name of submitter:	[redacted]		
Company or entity:	Partners Life		
Organisation type:	Life and health insurance provider		
Contact name (if different):			
Contact email and phone:	[redacted]		

Question or paragraph number	**Response**
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q1 exemption notice cls.7(1) and 7(3)(b)(iii)	*An entity that is permitted to rely on the exemption will invest significantly in their robo-advice offering.* *If the entity becomes aware of an adverse finding by a disputes resolution scheme, they must notify the FMA within 5 working days. If the entity does not, then 5 working days later, they can no longer rely on the exemption.* *There is no warning or opportunity to remedy the breach.* *Disputes resolution schemes often decide cases to provide an equitable outcome for the retail customer. This is not always the outcome expected by law.* *Moreover, there does not appear to be a consistent definition of an "adverse finding" across DRSs.* *We suggest that this outcome could be draconian in some cases. We suggest that an entity should have an opportunity to remedy the breach in these circumstances, before they are removed from the exemption.*
Q1 exemption notice cl. 7(3)(b)(iii)	*This notification clause relates to any adverse finding of a DRS.* • *Should adverse findings against the provider be limited to adverse findings that are relevant to the digital advice service?* *Does the FMA want a large bank to report a DRS outcome from an entirely different service under this requirement?* *If a digital advice platform has a financial adviser as a director, and there is a DRS finding for an unrelated activity against the director, does the FMA want this reported under this requirement?* • *Should the FMA be notified if the adverse finding is against a related party of the digital advice provider (e.g. its parent company).* *If related parties are excluded, entities can minimise required reporting by creating a subsidiary company to own the digital advice provider.*

Q1 *exemption notice* *cl. 8(1)* *Q5* *application guide*	*Clause 8 of the exemption contains specific conditions about:* • *Disclosure* • *Complying with relevant AFA code standards* • *Record-keeping.* *However, the minimum standards in the application guide do not require applicants to evidence that they comply with these conditions. (The only mention of documentation is on p35, which pertains to documents held by outsourced providers.)* *We suggest that the minimum standards should include requirements that evidence compliance with these conditions.*
Q5 *application guide*	*Our enquiries around the industry suggest that a common problem with FMCA licence applications occurs when applicant responses discuss all areas to think about in subsection C of each section, and the FMA responds that they have failed to evidence meeting the minimum requirements.* *Given the layout of the guides, it is understandable that an applicant would frame their answers to the questions in each subsection B, using the subjects to think about in each subsection C, and conclude that this would meet the minimum requirements.* *To avoid this problem with future applications, we ask that the FMA carefully review subsections C, and ensure that likely answers that cover all of these points will meet the minimum requirements in subsections A.* *If the points to consider in subsections C do not completely cover the minimum requirements in each subsection A, then the FMA should expect to receive further applications that make the same mistake.* *The questions in B and things to consider in C should be created so that likely answers together will address the minimum standards.*
Q5 *application guide* *page 43*	*The table for point 25c has an asterisk beside "Payor's name" in the third column.* *There is no explanation for the asterisk.*
Q5 *application guide* *page 43*	*Para 23(a) has a rogue "n" in "all relevant information n has been included".*

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 15 December 2017 Number of pages: 5

Name of submitter: ████████

Company or entity: Russell McVeagh

Organisation type: Barristers & Solicitors

Contact name (if different): ████

Contact email and phone: ████████ ████

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Q1: Do you have any comments on the draft exemption notice?	Overall, we consider the draft exemption notice to be well drafted. Our comments relate primarily to the definitions in the exemption notice and a desire for increased clarity regarding the interpretation of certain aspects of the exemption notice. ***Definition of "digital advice facility"*** In its current form, we consider the definition of "digital advice facility" to be problematic. The requirement that the service be provided "without the direct involvement of *any individual*" [emphasis added] in paragraph (b) of the definition could be problematic where the facility requires that customer to interact with the platform in order to generate the financial advice or provide the investment planning service. We note that aspects of the definition appear to mirror the definition of "digital advice" contained in the Australian Securities & Investments Commission ("**ASIC**") Regulatory Guide 255 (*Providing digital financial product advice to retail clients*). However, in that guide, ASIC defines digital advice with reference to there being no direct involvement of a *human adviser*. We propose that paragraph (b) of the definition of "digital advice facility" in the exemption notice be amended to specify that a digital advice facility operates "without the direct involvement of any individual *other than the retail client*", to explicitly exclude the recipient of the financial advice or investment planning service. ***Definition of "specified products"*** The draft exemption notice provides legislative cross-references to definitions for certain specified products (in subclause (e), (f) and (h) of the definition of "specified products" and in the definitions of "debt security", "equity security" and "quoted" in the Interpretation clause). However, there are no cross-references to definitions for "bank term deposit", "call building society share", "call credit union share" or "call debt security", all of which are defined in the FA Act. We consider it would be useful to also provide cross-references to definitions for these types of products. This may not be necessary if the interpretation clause (outlined below) is included.

	In addition, we believe the list of specified products should be expanded to include interests in quoted managed investment products (in addition to interests in a managed fund). Quoted managed investment products share similar characteristics (particularly as regards liquidity) with quoted equity securities. As a result, we see no reason for the exclusion of quoted managed investment products from the list of specified products. ***Definition of "material change of circumstances"*** As presently drafted, the definition of "material change of circumstances" under clause 7(3)(b) is too broad. It would require the provider to notify the FMA of circumstances relating to a director which are not relevant to the provision of the digital advice facility (for example, this would catch an adverse finding of a court in respect of a director's personal matters which is completely unrelated to, and which does not affect their ability to perform, the role of a director). We suggest amending 7(3)(b) as follows: (b) the provider or any of its directors or senior managers are subject to any of the following: (i) a civil or criminal proceeding or regulatory action (whether in New Zealand or overseas) in relation to the contravention, or involvement in the contravention, of any: (i) financial markets legislation; or (ii) overseas law that regulates the supply of any financial service, any dealing in financial products, or the management of any entity; or (ii) a regulatory or disciplinary action for a breach of a professional or industry code of conduct or the rules of a financial product market (whether in New Zealand or overseas); (iii) a criminal proceeding for a crime involving dishonesty; (iv) but does not include any proceeding commenced, or action taken, by the FMA. Our proposed amendments are consistent with the definition of "***relevant proceeding or action***" in respect of the general reporting conditions of a market service licensee under regulation 191(2) of the FMC Regulations. ***Interpretation clause*** Certain terms are used in the draft exemption notice, for example "financial advice", "investment planning service" and "retail client", which are defined in the FA Act or FMC Act, but are not explicitly defined in the exemption notice. As such, the following interpretation subclause should be inserted under the definitions in the Interpretation clause: Any term or expression that is defined in the Act or (as the case requires) the FMC Act and used, but not defined, in this exemption notice has the meaning given by the Act or (as the case requires) the FMC Act. The following definition should also be inserted in the Interpretation clause: **FMC Act** means the Financial Markets Conduct Act 2013. ***Disclosure*** It would be useful to include a requirement for the disclosure of information in Schedule 2 to be set out "clearly, concisely, and in a manner likely to bring the information to the

	attention of the retail client". We acknowledge that a provider will be required to satisfy itself that it is able to comply with Code Standard 6 (behaving professionally, and communicating clearly, concisely and effectively). However, we believe these requirements should be explicitly stated to apply to a provider's disclosure obligations and that there should be an express requirement to "bring the information to the attention of the retail client" in the exemption notice. We note that the Financial Advisers (Disclosure) Regulations 2010 explicitly include this as a requirement for secondary disclosure information by AFAs and disclosure by QFEs (see regulations 6(1)(d) and 8(5)(d)), and believe this is in line with the objective (outlined in the information sheet) of ensuring disclosure is structured to put the client's needs first (we discuss this point further in our response to Q2 below). ***Timeframe for retaining records*** It is currently unclear how long providers must retain written records about the digital advice facility. The exemption notice should specify the length of time for which a provider must retain these records (which should be at least for the duration of time that the provider relies on the exemption). ***Statement of reasons*** We suggest the second sentence of the second paragraph under the Statement of Reasons be amended to state: The exemption applies to entities listed in the schedule of the notice that are providing services through a digital advice facility to investment planning services and finance advice (excluding discretionary investment management services) ***in relation to*** certain specified products (including interests in KiwiSaver schemes and other managed funds, quoted equity or debt securities, Crown-issued debt securities, pure risk insurance products, savings products, and credit contracts). **[*Emphasis included to highlight additional wording*]**
Q2: Do you have any comments on the draft information sheet	***Application process*** To clarify that interested providers can, and will be, added to the list of providers that are approved by the FMA, we suggest the second sentence under the subheading *"Application Process"* (on page 10) should be amended to say: The ***current*** list of approved providers is set out in Schedule 1. **[*Emphasis included to highlight additional wording.*]** ***Disclosure*** We acknowledge the FMA's efforts to allow for flexibility regarding the manner/mode of disclosure and we are supportive of this. However, it would be helpful to provide further clarification on the definition of "disclose" in the information sheet including what would not be sufficient to meet this definition, bearing in mind the FMA's objective that disclosures need to be structured to put the client's needs first. For example, it may be that the provision of a link to disclosure information, or sending an email to the retail client containing disclosure information, may not meet the requirements of the exemption notice? ***Case study: KiwiSaver open-access tool*** When reading the first paragraph of the case study on page 11, it is not immediately clear that the advice being provided by the tool is personalised financial advice (as

	opposed to class advice), which risks confusing providers of class advice as to whether they would need to apply to rely on the exemption. This could be clarified by inserting the phrase *"based on their responses to a series of questions about their particular financial situation or goals"* at the end of the first sentence after the words "right for them". ***Application timeframes*** It would be helpful for those seeking to rely on the exemption to include (under the heading "*What to do before you apply"* on page 15) an indication of the timeframe the FMA will require to consider an application and decide whether an interested provider may rely on the exemption. ***Consistency of terminology*** The terminology used in the information sheet to describe the eligible products is different to the terminology used in the exemption notice (for example, "*listed* equity securities" rather than "*quoted* equity securities"). We suggest amending the terminology in the information sheet to be consistent with the terminology used in the exemption notice.
Q3: Do you have any comments on the draft application form?	We have no further comments on the draft application form.
Q4: Do you have any comments on the draft declaration form?	We have no further comments on the draft declaration form.
Q5: Do you have any comments on the draft application guide?	As currently drafted, it is unclear how to approach an application (ie who is required to apply) where multiple entities in the same group provide the same digital advice facility (for example, one entity in the group (**A**) could enter into an agreement with another group entity (**B**), allowing B to provide a digital advice facility built or acquired (and also provided) by A). In these circumstances, we believe it should be sufficient for A to apply to rely on the exemption, and B (as an entity within the same group) should also be able to rely on the exemption without having to separately apply. Consideration should be given to how (and by whom) an application should be made in such circumstances, and this should be reflected in the draft application guide .
Q6: (For providers) Do you intend to apply to us to be included in the list of providers able to rely on the exemption? If so, please provide an indication of when you expect to apply. Please also indicate how long you think it might take to prepare your application.	N/A
Q7: Do you have any other feedback or comments.	We have no further feedback or comments.
Feedback summary – *if you wish to highlight anything in particular*	
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Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemption to enable personalised digital advice: [your organisation's name]' in the subject line. Thank you.

Submissions close on 15 December 2017.

Date: 11/12/2017 Number of pages: 1

Name of submitter: [redacted]

Company or entity: Stewart Financial Group

Organisation type: Financial Advisers

Contact name (if different):

Contact email and phone: [redacted] [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Schedule 2 Section 1. (c)	*This disclosure should be in the same format as for non robo advice to make for easy comparisons. Disclosure should also include turnover driven costs, brokerage on transactions and FOREX fees and margins.*
Schedule 2 Section 1. (d)	*Agreed*
Schedule 2 Section 1. (e)	*We believe the sentence (other than remuneration that a reasonable client would consider to be of such an insignificant nature….) should be removed.* *Robo advice is a business model based on scale, so what may be a small revenue item, once scaled becomes a key remuneration driver*
Schedule 2 Section 2.	*It is imperative that the remuneration disclosure regime is consistent across all advice forms, human and non-human. Failing to do this will see a repeat of the unfairness and ultimate failure of the advice regime created in 2008 by then then Minister Simon Power with the first iteration off the FAA.*

Feedback summary – *if you wish to highlight anything in particular*

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Thank you for your feedback – we appreciate your time and input.

Feedback form: Exemption to enable personalised digital advice

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Submissions close on 15 December 2017.

Date: 11/12/2017 Number of pages: 1

Name of submitter: [redacted]

Company or entity: Strategic Wealth Management Auckland Limited

Organisation type: Financial Adviser Firm

Contact name (if different):

Contact email and phone: [redacted] [redacted]

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	
Schedule 2 Section 1. (c)	*This disclosure should be in the same format as for non robo advice to make for easy comparisons. Disclosure should also include turnover driven costs, brokerage on transactions and FOREX fees and margins.*
Schedule 2 Section 1. (d)	*Agreed*
Schedule 2 Section 1. (e)	*We believe the sentence (other than remuneration that a reasonable client would consider to be of such an insignificant nature….) should be removed.* *Robo advice is a business model based on scale, so what may be a small revenue item, once scaled becomes a key remuneration driver*
Schedule 2 Section 2.	*It is imperative that the remuneration disclosure regime is consistent across all advice forms, human and non-human. Failing to do this will see a repeat of the unfairness and ultimate failure of the advice regime created in 2008 by then then Minister Simon Power with the first iteration off the FAA.*

Feedback summary – *Is it truly going to be "personalised" advice?*

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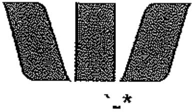
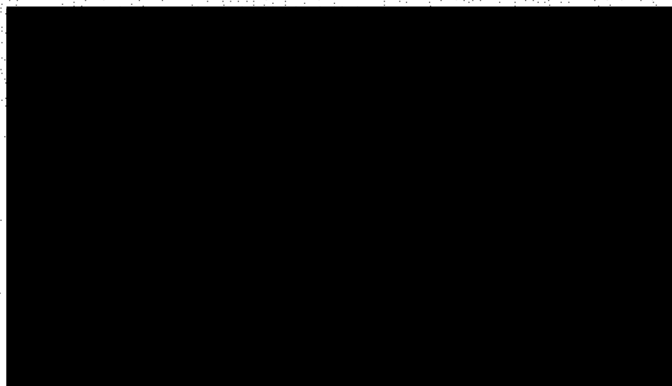
Thank you for your feedback – we appreciate your time and input.



Westpac New Zealand Limited

Submission to the Financial Markets Authority on the Consultation: Exemption to enable personalised digital advice

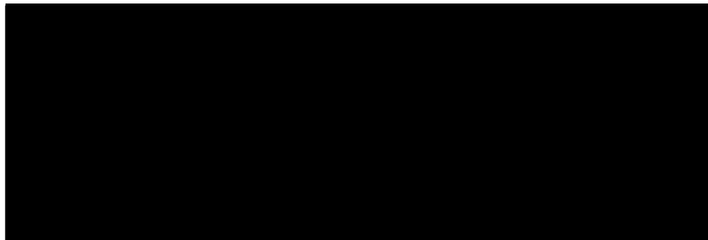
15 December 2017



1. INTRODUCTION

1.1 This submission to the Financial Markets Authority (**FMA**) is made on behalf of Westpac New Zealand Limited (**Westpac**) in respect of the *Consultation: Exemption to enable personalised digital advice* **(Consultation Paper).** Thank you for the opportunity to provide feedback. Please find our comments on the Consultation Paper and specific responses to the questions raised.

1.2 Westpac's contact for this submission is:



2. EXECUTIVE SUMMARY

We continue to support the FMA's provision of an exemption to enable personalised digital advice. We support the submissions made by the New Zealand Bankers Association (**NZBA**) in relation to the Consultation Paper. Our submissions below should be read as being additional to those made by the NZBA.

3. COMMENTS ON DRAFT EXEMPTION NOTICE

Definition of digital advice facility

Additionally, we note that because ASIC's definition (in ASIC's Regulatory Guide 255) focuses on the provision of advice, as opposed to the nature of the digital advice facility, it is clear that no human involvement relates to the type of advice provider (i.e. *"digital advice is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser").*

4. COMMENTS ON DRAFT INFORMATION SHEET

Licensing

4.1 The Consultation Paper proposes that any provider that wishes to be approved for inclusion in Schedule 1 of the Exemption must provide the FMA with good character declarations, complete the application process and be approved by the FMA. It must also show that it meets the minimum standards demonstrating its capability and competency to provide personalised services through a digital advice facility.

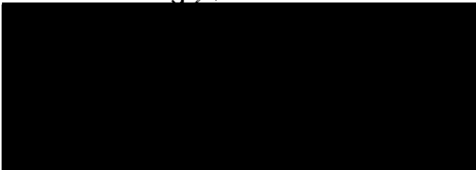
Document Classification: PROTECTED

4.2 The Exemption effectively creates another licencing regime in addition to a number of existing licences for many providers (QFE status under FAA, MIS and DIMS under FMCA, prudential requirements).

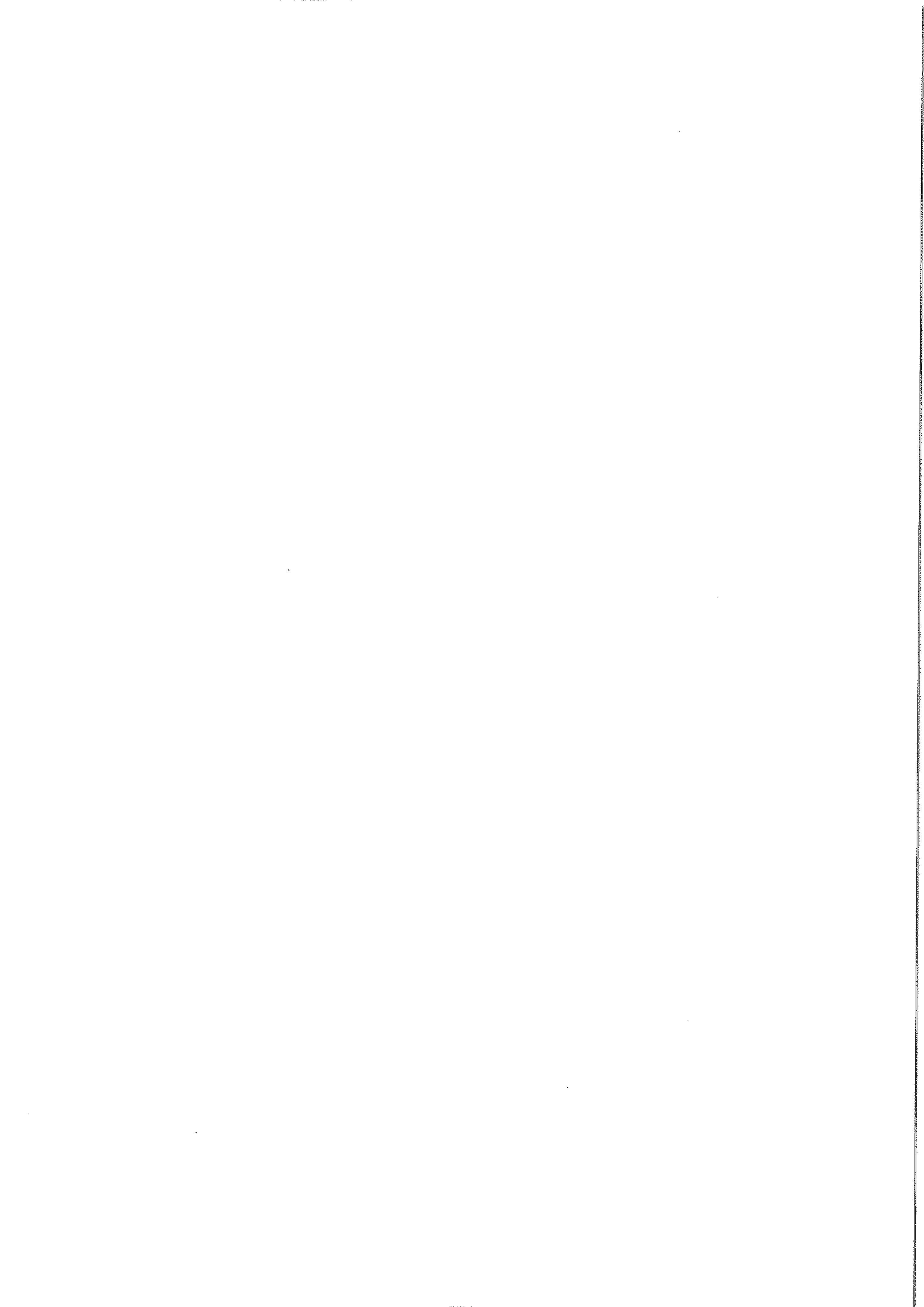
4.3 A key outcome of the FAA review is that the new regime will be delivery agnostic i.e. the same standards will be applied regardless of whether it is a human or technology solution that is giving the advice. We believe that QFEs (such as WNZL) should not be made subject to the same application process as non-QFEs, as this would result in application replication to license for an activity we are already permitted to provide (financial advice) and poses an unnecessary compliance burden on the QFE.

4.4 WNZL, as a licensed QFE, already has the capability and competency to provide (through its QFE advisers and AFAs) financial advice on both category 1 and category 2 products. The standards that will apply to the provision of personalised robo-advice (as proposed under the Exemption) are no more onerous than those currently in place for WNZL's AFAs, which WNZL currently takes responsibility for.

Kind regards



Document Classification: PROTECTED



From:
Sent: Thursday, 16 November 2017 4:14 p.m.
To: Consultation
Subject: Exemption to enable personalised digital advice:

I have read the draft exemption material and have the following comment for your consideration:

Does the draft exemption adequately cover off "innovative" approaches a provider might use to seek to monetize a client's use of a digital advice application in ways that may be inconsistent with the client's interests or, at the least, are without the client's explicit knowledge and consent?

Potential examples include:

- Using client information (including both information entered directly by the client, as well as other statistics or information obtained in the background in the course of the client's online experience) for purposes other than directly providing the advice. For example:
  - To target-market other products to the client; or
  - To sell client information (aggregated or not) to third parties.
- An ad-supported model that is not sufficiently clear as to which information provided is "advice", as opposed to being advertising or advertorial.
- Offering a base level of advice and then requiring a premium price to be paid to receive more complete advice. This could possibly be a legitimate way to differentiate the market and to provide add-on services, but it could also be implemented in a misleading "bait and switch" way.
- Using the online experience for purposes other than providing advice that are not made clear to the client, and that are not directly relevant to the advice process.
  - A current example of this in the news is websites that use JavaScript routines take over the CPU resources of site visitors to mine crypto-currencies in the background for the site-owner's benefit while the visitor is using their site (e.g. see https://www.techdirt.com/articles/20171113/11025138606/covert-cryptocurrency-miners-quickly-become-major-problem.shtml)

Disclosure: I am a member of the Financial Advice Code Working Group. This submission is made on my own account and has not been discussed with the Code Working Group.